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KERALA GAZETTE

SUPPLEMENTS

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Kerala Gazette No. 45 dated 15th November 1983.

PART I

GOVERNMENT OF KERALA

Abstract

KERALA FREEDOM FIGHTERS PENSION SCHEME—PENSION TO FREEDOM FIGHTERS—DISTRICT ADVISORY COMMITTEES—CONSTITUTED/RECONSTITUTED—NOMINATION OF ADDITIONAL MEMBERS TO THE DISTRICT ADVISORY COMMITTEES—ORDERS ISSUED

GENERAL ADMINISTRATION (FREEDOM FIGHTERS PENSION—B) DEPARTMENT

G.O. (MS) 327/83/GAD. *Dated, Trivandrum, 11th October* 1983.

Read:—1. G.O. (MS) 49/83/GAD. dated 18-2-1983
2. G.O. (MS) 123/83/GAD dated 31-5-1983
3. G O. (MS) 226/83/GAD dated 2-[illegible]-1983
4. G. O (MS) 82/83/GAD dated 8-2-1983

ORDER

The District Advisory Committees of all the Districts except Pathanamthitta have been reconstituted/constituted, with the members mentioned in the G.Os read as 1st, 2nd, 3rd and 4th papers above. Government are now pleased to nominate the following persons also as additional members to the District Advisory Committees shown against their names.

Shri A. N. Sivanandan, Secretary, Ex. INA Association, Kerala Shri K. Chellakanna Nadar, Kallarathala Vlakathu Veedu, Erichelloor, Plamoottukada P. O., Amaravila (via) Shri M. Sreekumar, Madhavamangalam, Karipoor, Nedumangad	Trivandrum
Shri Nanu, c/o C. K. George. President, Kerala Congress Quilon District, Committee Cherukara, Thrikkannamankal, Kottarakkara	Quilon

Shri P. K. Bhaskaran, Pullamthara, Maruthoorkulankara-Thekku, Alumkadavu P. O., Karunagappally	Quilon (Against the vacancy caused by the demise of Shri N. Sreekantan Nair)
Shri K. C. Joseph, Kuzhikkattumaliyil, Karimannoor P. O., Thodupuzha	Idukki
Shri K. A. Abdulkhader Kunju, Moossariseril, Kayamkulam	Alleppey
Shri P. C. John, Netaji Press, Perumpavoor 683 542	Ernakulam (Against the vacancy caused by the demise of Shri N. P. Joseph)
Shri P. R. Krishnan, Ex. M. L. A., Nadathara, Trichur District	Trichur

By order of the Governor,

J. JONES,

Under Secretary to Government.

To

The members
All District Collectors
The Accountant General, Kerala
The Secretary to Government of India
The Ministry of Home Affairs, New Delhi (with C.L.)
The Director of Public Relations
The P.S. to Chief Minister
The P. S. to the Minister (Fin.)
The P. S. to the Minister (Revenue)
The P. S to the Minister (Co-op.)
The P. S. to the Minister (Labour)
The P. S. to the Speaker

———

Kerala Gazette No. 45 dated 15th November 1983.

PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1004|83|LBR. *Dated, Trivandrum, 3rd September,* 1983.

The award of the Arbitrator Shri P. Madhavan, Retired Joint Labour Commissioner in respect of the dispute between the Management of Hindustan Latex Ltd., Trivandrum and their workmen represented by (1) Hindustan Latex Employees' Union (2) Hindustan Latex Workers' Union (3) Hindustan Latex Workmen's Congress (4) Hindustan Latex Labour Union (5) Hindustan Latex Security Staff Association (6) Hindustan Latex Supervisory Staff Association received by Government on 22-7-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government.

BEFORE THE ARBITRATOR

Present

P. MADHAVAN

In

INDUSTRIAL DISPUTE No. 1 OF 1983

Between

The Management of Hindustan Latex Ltd.

And

Their Workmen represented by

1. Hindustan Latex Employees' Union.
2. Hindustan Latex Workers' Union.
3. Hindustan Latex Workmen's Congress.
4. Hindustan Latex Labour Union.
5. Hindustan Latex Security Staff Association.
6. Hindustan Latex Supervisory Staff Association.

Representation:

Sri K. R. Chandrasekharan Pillai Sri R. Sukumaran Nair	Hindustan Latex Emplyoees' Union.
Sri S. Varadarajan Nair Sri P. Radhakrishnan Nair	Hindustan Latex Workers' Union
Sri Jayachandran Nair Sri V. Divakaran Pillai	Hindustan Latex Workmen's Congress.
Sri J. Chitharanjan Sri K. Sadasivan	Hindustan Latex Labour Union.
Sri K. Thankappan Nair	Hindustan Latex Security Staff Association.
Sri G. Ramachandran Nair	Hindustan Latex Supervisory Staff Association.

AWARD

The dispute between the Management of Hindustan Latex Ltd., and their workmen represented by the six Unions in respect of the following issues viz:

(a) Justifiability or otherwise of the seniority of the following eight Grade III workmen that has been fixed by the Management:—

1. Sri N. Ramachandran Nair
2. Sri B. Syed Ahmed
3. Smt. J. Saralamma
4. Sri N. K. Johny
5. Sri R. Vijayakumaran Nair
6. Sri G. Pathrose
7. Sri M. Galim
8. Sri K. Sathyanesan

and (b) The relief, if any, to be given to the above workers in case the seniority fixed for them is found to be not justified,—

was referred to me vide G. O. (Rt.) 47|83|LBR. dated 17-4-1983 for Arbitration under S. 10A of the Industrial Disputes Act, 1947.

2. The Hindustan Latex Employees' Union, hereinafter referred to as Employees' Union, in its statement has claimed as follows:—

3. The Management have not followed the universally accepted principles in the matter of fixation of seniority in respect of (1) to (7) in the list of workmen in the issues referred for Arbitration. Seniority of a workman in any category has to be determined on the basis of the length of his service

in that category. When two or more workmen are placed in a particular category, their interse seniority in that category has to be fixed by their respective length of service in that category. When the length of service of those workmen is equal, their total service in the industry will have to be taken into account in determining their interse seniority. Again, when both their length of service in the particular category as well as their total service are found to be one and the same, their respective age will be the criterion.

4. After enumerating the above general principles, the Union has dealt with the individual cases of the 7 workmen, seriatim.

5. Sri N. Ramachandran Nair (1) who joined the services of the Management on 1-4-1970, was promoted to the semi-skilled category (since renamed as Grade III) with effect from 1-9-1972. He is having the longest service in that category and as such, has to be ranked 1; but he has been ranked as 12.

6. Sri B. Syed Ahmed (2), ranked 52 (?) joined the Management services on 15-7-1971 and promoted to Grade III on 25-7-1973, has to be assigned a higher rank based on the length of service in Grade III.

7. Smt. J. Saralamma (3) who joined the services of the Management on 22-8-1970, was placed in Grade III on 1-1-1975 and ranked 52. She is entitled to a higher rank.

8. Sri N. K. Johny (4), rank No. 53 in Grade III, joined the services on 1-4-1970 and promoted to Grade III on 1-10-1976. He is to hold a higher rank.

9. Sri R. Vijayakumaran Nair (5) who entered service on 25-7-1973, was promoted to Grade III on 1-10-1976 and ranked 19, is entitled to a higher rank.

10. Sri G. Pathrose (6) joined the services on 25-7-1973, was promoted to Grade III on 1-10-1976 and assigned a rank lower than what he is entitled to.

11. Sri M. Galim (7) who entered service on 1-9-1971, was promoted to Grade III on 1-6-1975 and ranked 5. Sri K. Vasudevan Nair ranked 2, had also joined the service on the same day as Sri Galim and promoted to Grade III on the same day as Sri Galim. So, age should be the criterion in fixing the rank of the two workmen

12. Sri K. Sathyanesan's (8) case is espoused by the Hindustan Latex Labour Union, hereinafter referred to as Labour Union. The Union has claimed that he joined the company as a temporary unskilled worker on 2-2-1971 and confirmed on 25-7-1973. He was transferred to the Administrative

side, as a Peon, on a permanent basis on 10-6-1974. He was again transferred to the factory on 1-10-1976 without taking into account his past services. The Union has claimed that his past service may be reckoned in the matter of fixation of his grade and also his pay.

13. The Hindustan Latex Workers' Union, hereinafter referred to as Workers' Union, has claimed that the ranking in respect of workmen (2) to (6) is erroneous and unjustifiable and as such they have to be assigned ranks afresh. The Union further claimed as follows:—

14. By virtue of an Agreement between the Management and the Unions on 8-9-1971, seniority alone was the criterion for promotion to higher grades. This policy is seen subsequently modified to the extent that seniority in a particular channel or Department, viz. Mechanical Maintenance, Electrical Maintenance, Production etc. would be the criterion for promotion in that particular Channel or Department. On the basis of this new policy, accepted by all concerned, a seniority list of Grade III workmen was published in 1976. According to this list, Sri N. Ramachandran Nair (1) was assigned rank No. 133, Smt. Saralamma (3) 165, M. Galim (7) 165, Nos. 2, 4, 5, 6 and 8 were seen not in the list at all. In fact, Nos. 4, 5, 6 and 8 were actually included in the seniority list of unskilled workers (Grade II). Still, No. 2 did not find a place in either.

15. On 21-6-1976, the Management declared a unilateral promotion policy which was objected to by all the Unions. However, the Management gave an assurance that any promotion effected on the strength of the alleged unilateral promotion policy would be reviewed in consultations with the Unions. Still, on the basis of the alleged unilateral promotion policy, Nos. 4, 5 and 6 were promoted to Grade III and included in the seniority list published on 1-10-1976. Surprisingly, No. 2 was found in rank No. 52 (?) in the seniority list of Grade III. So also, is the case with No. 3, ranked 52. As regards 4, 5 and 6, they have absolutely no claim to be promoted to Grade III at all. Now that they have been put in Grade III, the highest ranks they could hold are below rank No. 98 as 98C, 98D and 98E respectively, No. 2 being 98A, and No. 3 as 98B.

16. Now, coming to the Hindustan Latex Workmen's Congress, hereinafter referred to as Workmen's Congress, it has filed a statement accepting the seniority list published by the Management.

17. As regards the other 2 Unions in the array of parties, they have not filed any claim statement at all, eventhough, they have been present at all the six hearings.

18. The Management, in their counter statement, have answered all the points raised by the Unions in their claim statements.

19. The Management have dealt with the case of Sri Sathyanesan, at the first instance, on the following lines:—

20. Sri Sathyanesan, who holds the rank of 147 in the revised seniority list published on 27-3-1982, was recruited as an unskilled worker on 25-7-1973. In response to a notice calling for unskilled workers to be appointed as Peons in the Administrative Wing on a permanent basis, Sri Sathyanesan opted for the post of Peon and continued as such from 10-6-1974 to 1-10-1976, when he was absorbed in the factory, consequent on the reduction of the number of posts of Peons from 11 to 3, while implementing the recommendations of K.S.P.C. on Work Study. As was agreed to by the Unions Sri Sathyanesan, along with his 8 colleagues, were placed juniors to these who were promoted to Grade II on 1-10-1976. While continuing as Grade II, he got promotion to Grade III on 1-11-1981. When once he had opted to the Administrative Wing on a permanent basis, he had forfeited his lien on the factory side. Again, when posted to factory side on 1-10-1976, his seniority can be reckoned only from that date for further promotions.

21. Now, coming to the other 7 cases, the Management have contended as under:—

22. Sri N. Ramachandran Nair (1), ranked No. 12 in the revised seniority list of 27-3-1982, was an unskilled worker from 1-4-1970 till he was promoted to the semi-skilled cadre on 1-9-1972 in the Electrical Wing. He was promoted to Grade III on 1-10-1976 and is still working in that Wing. The Management had no objection in shifting the rank of Sri Ramachandran Nair to No. 1, as he is still working in the Electrical Wing and his further promotions will be confined exclusively to that Wing.

23. Sri Syed Ahmed (2) was a Peon from 15-7-1971, till the implementation of I. A. M. R. Work Study Report, when he was appointed to the isolated post of Cook-cum-bearer on 25-7-1973. On the recommendations of the KSPC, the post of Cook-cum-bearer was abolished with effect from 1-10-1976. He was therefore accommodated on the factory side on that date, ranking him as junior-most among Grade III workmen.

24. Smt. J. Saralamma (3) was first appointed as First-Aid worker (unskilled cadre), an isolated post, on 22-8-1970. When the post was upgraded to the scale of semi-skilled, she got it with effect from 1-1-1975. The KSPC categorised the post of First-aid Attender as Grade II. So, when its recommendations were implemented on 1-10-1976, she ought to have been in Grade II. But to protect her, she was transferred to the Production Section and placed junior to the workers in Grade III in the Production Section.

25. Sri N. K. Johny (No. 4) who holds the rank of 53 in the revised list, was in the Mechanical Department, till he came to the Production Department of his own accord. As such, he was assigned a rank junior to those who got promotion to Grade III from 1-10-1976.

26. Sri R. Vijayakumaran Nair (5) and Sri G. Pathrose (6) have been assigned ranks No. 54 and 55 respectively. Both of them were in the unskilled category till 30-9-1976 and promoted to Grade III on 1-10-1976, while all the 53 workmen above them had been promoted to Grade III prior to 1-10-1976.

27. The last case, the Management have dealt with, is in respect of Sri M. Galim (7), who is ranked No. 5 in the revised seniority list. Serial Nos. 2 to 5 in the said list have entered the services of the Management on the same day, i.e. 1-9-1971 and promoted to the semi-skilled cadre on the same day, i. e. 5-2-1973. So, their interse seniority is fixed on the strength of their position in the unskilled cadre. The seniority list of unskilled workers, published on 5-6-1975, shows their respective rank in the same order. So, the Management have followed it.

28. The Employees' Union and the Workers' Union filed their respective Replications as well.

29. Subsequently, I heard the parties after due notice.

30. The dispute is actually between the Employees' Union and the Labour Union on one side and the Management on the other, eventhough, all the six Unions are seen in the array of parties on the Workers' side. While, the cause of 7 workers is espoused by the Employees' Union, the Labour Union espouses the cause of one workman viz. Sri Sathyanesan. Again, while HL Supervisors' Association, HL Workmen's Congress and the HL Security Staff Association appear rather unconcerned about the dispute, the Workers' Union, very strongly oppose the claims of both Employees' Union and the Labour Union.

31. The issues, as have been spelt out in the S. 10A Agreement, are (i) justifiability or otherwise of the seniority of eight workmen, that has been fixed by the Mnagement and (ii) the relief, if any, in case the seniority fixed is not justified. Now, what are the principles governing seniority? Let us enumerate them—

(i) Seniority of a workman in any category will be determined on the basis of his length of service in *that category.*

(ii) Interse seniority of two or more workmen in a particular category, consequent on transfer from one category to another, or merger of one category with one or more categories, will be decided by the length of their respective seniority in *that category.*

(iii) When the length of service of two or more workmen in *that category* is one and the same, the total service in the industry will be taken into account to determine their interse seniority in *that category.*

(iv) When the length of service of two or more workmen in a particular category and their length of service in the industry are again one and the same, their interse seniority in that category will be determined on the basis of their age senior in age getting higher place than his junior in age.

The above principles are seen accepted by the Employees' Union in its claim statement.

32. Let us, now, look into the principles governing promotion followed by the Management. The Workers' Union, in its claim statement has contended that in an agreement dated 8-9-1971, the promotion policy viz. seniority alone would be the criterion, was spelt out. But the Union had not marked a copy of the said agreement. The Union has further stated in its claim statement, that by virtue of a subsequent settlement between the Unions and the Management, promotions would only be on the basis of seniority in the particular Channels like Mechanical Maintenance, Electrical Maintenance, Production, Stores, Administration etc. This practice is termed "Channel Promotion" by the parties. Eventhough no such agreement is seen marked either by the Workers Union or any in the array of parties, this practice seems to be the accepted policy. Ext. M-18 is the proceedings of a meeting of the Trade Unions in the factory Wing viz. Employees' Union, Workers' Union and H. L. T. Association, on 15-7-1976, wherein it is stated as follows:

"All the Trade Unions raised serious objection as to the promotion of two Drivers. They have stated, these Drivers were retrenched by the company. When there was no vacancy, they were transferred to the factory as semi-skilled workers. Normally, they should be the juniormost in the semi-skilled category at the time of transfer. Personnel Manager promised that he would look into all aspects of this issue. He also emphasised that further promotions will be made only on the basis of the new policy until modifications are made thereto".

Ext. M12 is copy of the Minutes of the Meeting held between the Management and the H. L. Workers' Union on 20-1-1977, wherein the General Manager is seen to state that the promotion policy would be finally decided after a discussion between the Management and the Unions. But during the course of the arguments, the Unions and the Management were harping on the "Channel Promotion". So, admittedly, it is the policy followed by the Management.

33. I am now to take up each case seriatim.

34. Sri N. Ramachandran Nair (1), is ranked 12 in the revised seniority list published on 27-3-1982. He belongs to the Electrical Department. The principles enunciated in respect of seniority in para 31 do not affect him as he is still working in the Electrical Department. I do not see my way to agree to the suggestion of the Management that he should be brought to the

General Pool. He seems to have entered service on 1-4-1970 and promoted to Grade III on 1-10-1976. Sl. No. 2 to Sl. No. 11 in the revised seniority list have entered service only in 1971 and 1972. The date of entry into service and date of promotion to Grade III of Sl. No. 1 Sri Abdul Razak and Sri Ramachandran Nair are identical. So, age, as stated in (iv) of Para 31 will have to be followed here. The date of birth of Sri Abdul Razak according to Ext. M7 is 11-10-1947 and that of Sri Ramachandran Nair is 24-10-1941. As such, Sri Ramachandran Nair is to be ranked No. 1. I hold accordingly.

35. Sri B. Syed Ahmed is admittedly appointed as Peon with effect from 15-7-1971, and as Cook-cum-bearer in the semi-skilled cadre with effect from 25-5-1973. Consequent on the implementation of the recommendations of KSPC, the Guest House was closed resulting in the Cook-cum-bearer becoming redundant. To avoid retrenchment, he was absorbed in the factory. To protect his pay, he was rightly placed in Grade III from 1-10-1976 and was posted as the junior-most in the Production Department. The Employees' Union, in its pleadings, has urged that the workman never agreed for the implementation of KSPC Report, nor the Notice under S. 9A contained anything about closing down of any Department or transfer of workmen from one Department to another. Ext. M10 is the record of discussions between the Management and all the Unions held on 30-9-1976. The Preamble states as follows:—

> "The joint proposal of pay scales given respectively by the various Trade Unions of the factory and the Administrative Wing were discussed in detail. The anomalies in the proposed pay scales were pointed out by the Management and the various Trade Unions were requested to suggest new scales in line with the gradations given to the different categories of employees in KSPC Report. After detailed discussions, all the Trade Unions agreed as their joint proposal, for acceptance by the Management, the following scales of pay and the minimum benefits.........."

There follows different scales of pay for different grades, both in the Administrative and Production Wings. The pros and cons of the implementation of KSPC Report are seen discussed in all its details. Prior to that, on 9-9-1976, a notice under S. 9A of the I. D. Act was also published for effecting changes, specified in the annexure to the Notice with effect from 1-10-1976, in the conditions of service applicable to the workmen. The annexure to the said Notice, gives details of classification by grades of workmen and the number of workers to be employed in the various Sections| Departments effective from 1-10-1976. I may also reproduce the penultimate para of the explanatory note:

> "The Management is very happy to note that the KSPC conducted their Work Study with the co-operation and support of the Trade Unions functioning in the organisation. The KSPC had discussions with the

representatives of the Trade Unions and the Management during the various stages of the Study and as a matter of fact the studies were completed with certain modifications emerged out of the discussions with representatives of unions and management In this connection it is pointed out that the instituting of the Work Study by the KSPC, was made with the concurrence of the Trade Unions of the Company as early as April, 1975".

In view of the above, any one who has had any involvement in the Work Study is estopped from raising the plea that he did not accept the KSPC Report or that the Report did not contemplate any closure of a Department or transfer of workmen from one Department to another, at this point of time. Admittedly, Sri Syed Ahmed cannot claim any rank higher than 51, when he was accommodated in the production wing as the junior-most in Grade III, consequent on the abolition of the post which he was holding on the implementation of KSPC recommendations.

36. The next one is the case of Smt. J. Saralamma (3), who admittedly, joined the services of the Management as a First-Aid Attender (unskilled cadre), an isolated post, with effect from 22-8-1970. When the post was upgraded to the semi-skilled cadre, the incumbent was promoted as First Aid Operator with effect from 1-1-1975. When the post was down-graded as Grade II, vide recommendation of KSPC, she had to seek her fortune elsewhere. To protect her pay and with a view to averting retrenchment, she was provided with a place in the Production Department as junior-most among the Grade III workers, who have had their promotions to that grade prior to 1-10-1976, and ranked 52, her legitimate place. I don't find anything wrong in her ranking and hold accordingly.

37. Sri N. K. Johny is fourth in the list of the disputed seniority cases. The Management, in their counter statement have contended that Sri N. K. Johny joined the company on 1-4-1970. He was working in the Mechanical Department which is a separate channel for promotion. It is further stated that he came to the Production Department as Grade III of his own accord. The learned counsel for the Employees' Union has taken strong exception to the statement that Sri Johny was transferred to the Production Department "with his consent". Where is his consent? The Management have not marked any exhibit to show his consent. Why was he brought to the Production Department from the Mechanical Department? The Management remain silent on this point. So, the only conclusion I can draw in the instant case is that he was drafted to the Production Department without his consent and assigned a rank inconsistent with the length of his service which is derogatory and unjustifiable. To rectify this mistake, two courses are open to the Management: (i) Promote him to Grade III with retrospective effect from 1-10-1976 in the Electrical Department and assign him a rank in that Department consistent with the length of service in that Department; (ii) in case, the prospects of his future promotions in the Electrical Department are

been less than that in the Production Department, he should be assigned a rank in the Production Department, taking into account his length of service in the Electrical Department. In either case, I should add, the worker should be in a position to get whichever is more beneficial to him, in the Production or Electrical Departments. I hold accordingly.

38. 5 and 6 viz. Sri R. Vijayakumaran Nair and Sri G. Pathrose are clubbed together by the Management in their counter statement as well as in the replication filed by the Employees' Union. The Employees' Union, which espouses the cause of these two workers, is not in a position to throw light on the alleged seniority of these two workers vis-a-vis their compeers. As regards Sri Vijayakumaran Nair, the Union, in its claim statement, says "on the basis of the length of service, he is to be ranked as 19, whereas he is entitled to some other rank". I wonder, what the Union really meant by this. In the seniority list of grade III workers, as on 1-10-1976, he is actually ranked 19 and in the revised seniority list, he is ranked as 54. With regard to Sri Pathrose, what the Union has stated in its claim statement is, "on the basis of the length of service he is to be ranked on the seniority list. His present rank is lower than the rank he is entitled to". In the Replication, the Union has stated:

> "Sri R. Vijayakumaran Nair and G. Pathrose were promoted to Grade III from 1-10-1976. Others were also brought to that category on 1-10-1976. There are several others who were thus promoted to Grade VI(?) on 1-10-1976. But in fixing interse seniority of such persons is fixed, the total service is to be taken into account. If this correct principle is followed, these two workers are entitled to higher rank as in the case of earlier list".

None of the parties have enlightened me as to whether the said two workers originally belonged to the Production Department or brought to the Production Department from some other Department. The Management, in their counter statement have, in the context, said "..............Therefore, the workers above them in the revised seniority list have a right to get seniority by virtue of their service in the Production Department". It, therefore, seems, that they were drafted to the Production Department from some other Department. If so, what the Management had done in the matter of ranking in respect of the two workers cannot be disputed. I therefore, hold that the present ranking of Sri R. Vijayakumaran Nair and Sri G. Pathrose, viz. 54 and 55 in the revised seniority list need not be disturbed.

39. Sl. No. 7 in the list is M. Galim who entered service on 1-9-1971. The Union's case here is that Sri Galim was senior to Sri K. Vasudevan Nair, rank No. 2 in the revised seniority list, till the DPC modified the ranking of Sri Galim on 5-6-1975, by bringing him down to the rank of 5 ignoring the eligible leave due to him, including the E.S.I. leave taken by him, on the plea that there was no valid certificate for the leave. This was immediately

brought to the notice of the Management by the Union, forwarding the required ESI certificates (Ext. EU-1). The Management's reply thereto, is marked Ext. EU2. Ext. EU3 is a letter written by the Management to the Union seeking more time to arrive at a final decision in the matter. Ext. EU4 is the Minutes of the Meeting of the Management and Employees Union held on 11-7-1979, wherein, under para 6, 'seniority of Sri M. Galim', it is stated as under:—

"This issue was discussed at length. It was conceded that there was a recollection that some ESI certificates were actually produced by Sri M. Galim long time back, but were not now traceable. The periods and other details are not available. Efforts will be made to trace out the ESI certificates stated to have been given to Personnel Section".

According to the Union, the undue delay in taking a decision for want of the missing records, was a deliberate act on the part of the Management with the sole intention of favouring some others. But in Ext. WU5 marked by the Workers' Union, Minutes of the meeting of the Management and the Employees Union held on 17-11-1979, an interesting point is recorded in Para 8 under "seniority of Sri M. Galim", wherein it is stated as under:—

"The case was discussed in detail. The Trade Union representatives agreed to obtain fresh copies of ESI certificates for further action".

The said meeting is seen attended by Sri R. Sukumaran Nair also along with others. Since agreeing to obtain fresh copies of the ESI certificates, why the Union has failed in doing so? Now that the Union has agreed to do it, the onus, I am afraid, is shifted on the Union. In the circumstances, I hold the view that no change in the rank in respect of Sri Galim is called for, until fresh copies of ESI certificates were submitted to the Management as agreed by the Employees' Union, for further action.

40. The only case that remains to be examined is that of Sri K. Sathyanesan, sponsored by the Labour Union. Admittedly, he was appointed as a casual worker on 2-2-1971. He offered himself as a Peon in the Administrative wing on a permanent basis, with effect from 10-6-1974. Subsequently, consequent on the implementation of the recommendations of the KSPC, the number of posts of Peons was reduced from eleven to three. Naturally, 3 senior-most Peons were retained and the others were accommodated in the factory, with a view to avoiding retrenchment. Sri Sathyanesan happens to be one among the eight. Naturally, he has to take a position junior to the factory workers in Grade II on 1-10-1976. His next promotion to Grade III was on 1-11-1981 and ranked 147 in revised seniority list. During the course of arguments, it was contended by the Labour Union, that it was on the strength of a decision taken by the Management that Sri Sathyanesan was sent back to the factory. In this connection, I would like to refer to the Ext. LU1 marked

by Labour Union, a Record of Discussions held on 30-9-1976 regarding the implementation of the recommendations of the KSPC. The meeting is attended by the chairman, General Manager, FA and CAO, Personnel Manager and Accounts Manager on the Management side and 6 Unions. The HLL Union is conspicuously absent, either it did not exist at that time or it had deliberately evaded the meeting, had it been in existence at that time. The penultimate para of the record of discussions runs as under:—

> "The question of accommodating the present Class IV employees (Peons etc.) in the Administrative Wing came up for discussion. The Trade Unions of the Administrative Wing desired that all the Class IV employees might be retained in the Administration itself. The Chairman emphasised that the placement of additional personnel in contravention to the recommendations of the KSPC would be detrimental to the interest of the Company and as such Management has taken a decision to implement this recommendation of the KSPC Report in the first stage. However, he agreed that the implementation of certain other recommendations may be reviewed after a period of two months or so. The Chairman advised the various Trade Unions of the Administrative Wing not to insist on keeping more people than the recommended strength. After considerable deliberations, it was decided to retain three class IV employees in the Administration as Grade I employees and the others be transferred to the factory side. Those transferred will be accommodated for seniority, just below the junior-most existing permanent unskilled employee. They will also be entitled for promotions according to interse seniority".

In view of the above, I have no hesitation in holding that Sri Sathyanesan cannot have any genuine grievance in the matter of his rank in the revised seniority list of Grade III workers and that his ranking does not call for any change.

41. In the result, an award is passed in terms specified above.

42. This award shall come into force on the thirtieth day of its publication in the Government Gazette.

Ordered accordingly.

P. MADHAVAN,

Dated the Sixteenth day of July, 1983. *Arbitrator.*

Exhibits marked for the Management.

M1 True copy of Office Order No. 79|74 dated 6-5-1974.

M2 " of Notice under S. 9A of ID Act, dated 9-9-1976.

M3	True Copy	of Office Order No. 107|76 dated 30-9-1976.
M4	"	of Office Memorandum dated 20-8-1972.
M5	"	of Memo dated 23-7-1973.
M6	"	of Office Order No Nil dated 1-1-1975.
M7	"	of Revised Seniority List of Grade III workers.
M8	"	of Seniority List of Grade III workers as on 1-10-1976.
M9	"	of Minutes of meeting of the Management and representatives of Hindustan Latex Employees Union dated 11-7-1979.
M10	"	of the Minutes of the Meeting dated 30-9-1976 with Trade Unions regarding KSPC Report.
M11	"	Objections filed by HL Workers' Union, HL Labour Union and HL Workers Congress against the Draft Seniority List.
M12	"	of Minutes of the meeting dated 20-1-1977 of the Management and the HL Workers' Union.
M13	"	of Minutes of the meeting of the Management and the HL Workers' Union dated 4-1-1980.
M14	"	of objections filed by certain workers of Grade III to the Draft Seniority List.
M15	"	of Seniority List of semi-skilled workers dated 16-7-1976
M16	"	of Management's letter dated 9-6-1975 to the H. L. Employees' Union.
M17	"	of Management's letter dated 21-1-1976 to H. L. Employees' Union.
M18	"	of the Minutes of the Meeting of the Management and Unions dated 8-7-1976.
M19	"	of the Minutes of DPC dated 5-6-1975.
M20	"	of Seniority List of unskilled workers as on 5-6-1975.
M21	"	of KSPC Report on posts in Grades I to VI.
M22	"	of Office Order No. 183|78 dated 9-11-1978.
M23	"	of Office Order No. 144|76 dated 26-11-1976.
M24	"	of Office Order No. 42|79 dated 6-4-1979.
M25	"	of Memo dated 2-12-1978 to Sri N. Ramachandran Nair.
M26	"	of Office Order No. 180|77 dated 22-12-1977 promoting Sri N. Ramachandran Nair and 3 others to Grade IV.
M27	"	of Memo dated 23-7-1973 appointing Sri B. Syed Ahmed as Cook-cum-caretaker.
M28	"	of Appointment Order dated 12-7-1971 issued to Sri B. Syed Ahmed as Peon.

M29 True Copy of Orders of transfer issued to Smt. J. Saralamma to Production Department as Grade III worker.

M30 „ of Appointment Order issued to Smt. J. Saralamma as unskilled worker.

M31 „ of Memo dated 6-4-1979 to Sri K. Sathyanesan.

M32 „ of Memo dated 5-1-1977 to Sri K. Sathyanesan.

M33 „ of Meeting of the Management and H. L. Employees' Union dated 2-4-1979.

Exhibits marked for the H. L. Employees' Union.

EU1 True copy of Unions letter to the Management dated 5-6-1975 regarding seniority of Sri M. Galim.

EU2 „ of Management's letter dated 9-6-1975 to the Union regarding Sri M. Galim.

EU3 „ of Management's letter dated 21-1-1976 to the Union regarding Sri M. Galim.

EU4 „ of the Minutes of the meeting of the Management and representatives of H. L. Employees' Union dated 11-7-1979.

EU5 „ of Office Order dated 1-1-1975 in respect of Sri M. Galim.

EU6 Copy of the Abstract of the Minutes of the Meeting of the Management and Trade Unions held on 24-1-1978.

EU7 Copy of revised seniority list of Grade III workers.

EU8 Copy of item 10 of the Minutes of the Conference of the Management and the Unions held on 16-10-1977.

EU9 Copy of item 4 of the Minutes of the Conference of the Management and Trade Unions held on 28-10-1977.

EU10 Copy of item 4 of the Minutes of the Conference of the Management and Trade Unions held on 6-7-1978.

EU11 Notice under S. 9A of I. D. Act dated 9-9-1976.

Exhibits marked for the H. L. Workers' Union.

WU1 Photostat of the Proceedings of the Meeting of the Trade Unions in the Factory Wing and the Management held on 8-7-1976.

WU2 Photostat of letter dated 12-7-1976 from the General Secretary to the District Labour Officer.

WU3 Copy of the Minutes of the meeting of the representatives of Trade Unions and Management held on 8-10-1976.

WU4 Copy of Union's letter dated 14-12-1976 to the Management.

WU5 Copy of Abstract No. 8 of Minutes of the Meeting of the Management and H. L. Employees' Union held on 17-11-1979.

WU6 Copy of the Seniority List of unskilled workers as on 5-6-1975.

WU7 Letter dated 15-12-1979 from the General Secretary to the Management regarding Sri M. Galim.

WU8 Copy of letter dated 3-1-1975 from Sri K. Vasudevan Nair to the General Manager.

WU9 Copy of letter dated 26-4-1979 from the Management to the Deputy Labour Commissioner.

WU10 Copy of letter dated 2-2-1979 from the Union to the Deputy Labour Commissioner.

WU11 Copy of Union's letter dated 30-6-1975 to the Management.

WU12 Copy of letter dated 11-6-1975 from Sri K. Vasudevan to the Management.

WU13 Copy of letter dated 29-1-1975 from Sri K. Vasudevan Nair to the Management.

WU14 Copy of letter dated 2-2-1979 from the Union to the Management.

Exhibits marked for the H. L. Labour Union.

LU1 Copy of Record of discussions of the Management and the Unions on 30-9-1976.

LU2 Copy of Submission given by Sri K. Sathyanesan.

Kerala Gazette No. 45 dated 15th November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 983/83/LBR. *Dated, Trivandrum, 26th August 1983.*

The award of the Labour Court, Quilon in respect of the dispute between the Managing Director, The Kerala State Financial Enterprises Ltd., P. B. No. 172, Trichur and their workman K. P. Mohandas, C/o Smt. M. P. Chellamma Pillai, Karanaputhuval, Naduvathu Cherry, Chavara received by Government on 17-8-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,

Deputy Secretary to Government.

In the Labour Court, Quilon

Wednesday, the 10th day of August, 1983/19th Sravana, 1905

Present:

SMT. C. VISALAKSHI AMMA, B.A., B.L.,

Presiding Officer

In

INDUSTRIAL DISPUTE No. 1/80

Between:

The Managing Director,
The Kerala State Financial
Enterprises Ltd.,
P. B. No. 172,
Trichur. } *Management*

And

K. P. Mohandas,
C/o Smt. M. P. Chellamma Pillai,
Karanaputhuval,
Naduvathu Cherry,
Chavara. } *Worker*

GA. 115/J

Representations:—

M/s Puthur R. Gopalakrishnan, G. Sathyababu and N. Kesava Kurup, Advocates, Quilon.	For *the Worker*
M/s K. Velappan Pillai, K. Nadaraja Pillai and S. Sudharsanan, Advocates, Quilon.	For *the Management*

AWARD

1. Shri K. P. Mohandas, an employee, of the Kerala State Financial Enterprises Limited hereinafter referred to as the management, was charge sheeted with having committed the following misconduct namely, fraud, dishonesty, forgery, using false documents as genuine and misappropriation, in connection with the business of the management. An enquiry was conducted in the matter by the enquiry officer Shri R. Bahuleyan, Advocate, Quilon in which the workman was found guilty of the charge. The findings of the enquiry officer were accepted by the Managing Director and accordingly the workman was dismissed from service. An industrial dispute was raised over the dismissal which the government referred for adjudication to this court in Section 10 (i) (c) of the Industrial Disputes Act, 1947 by Order G.O.(Rt.) No. 53/80/LBR dated 9-1-1980.

The workman filed a clarification statement before this court raising following contentions:—

He was appointed as Junior Assistant, under the opposite party management in 1970 and was promoted as Senior Assistant in March, 1976. During the past seven years of his service there has never been any occasion for any complaint regarding his work. For the first time he was charge sheeted and placed under suspension on 30-3-1977 alleging fraud, dishonesty etc. The charges were entirely misconceived and basically erroneous and he had given an explanation stating his innocence in the matter. The charge sheet and the suspension were engineered by interested parties on the eve of his due promotion and with a view to forstall it. During the enquiry he had requested the management to produce certain material documents, but that request was not complied with. Similarly his request for examination of certain material witnesses was also not allowed. Before he was dismissed from service he was not supplied with the copy of the enquiry report and even now such report has not been made available to him. The dismissal order passed against him is irregular and erroneous and is liable to be set aside. He would accordingly pray that he may be directed to be reinstated in service with full backwages and continuity of service.

The Management filed the reply statement raising the following contentions :—

The reference itself is not sustainable as the dispute is not an Industrial Dispute. The management is not an Industrial Establishment and therefore this court has no jurisdiction to entertain and adjudicate the dispute. On an earlier occasion the State Government had found that there is no prima facie case for reference and therefore the present reference is bad in law. The delinquent worker has committed serious misconducts of fraud, dishonesty, forgery, using false documents as genuine and misappropriation of funds etc. and hence he was served with a memo of charges dated 30-3-1977. The specific charges levelled against him are the following :—

On 2-11-1976 one Smt. Sobhana Sudharma, a removed subscriber in Chitty No. 2103/247 presented herself in the office of the management and filed a petition before the branch manager requesting return of the amount contributed by her in the said chitty. The Branch Manager handed over the application to the workman with written instructions to verify and arrange payment. The delinquent workman told her that the amount due to her will be paid on clearing her dues as a surety in chitty No. 2103/248. On 8-11-1976 the workman prepared a stamped receipt, forged the signature of Smt. Sudharma and also prepared a payment voucher No. 1844 dated 8-11-1976 for Rs. 1,764.85 wherein also the delinquent forged the signature of Smt. Sudharma and, managed to get sanction from Sri Thrivikraman Pillai, the then Executive Assistant (Head Assistant) and the Branch Manager Shri G. Sreedharan for payment of the amount due so her. The workman then prepared the cheque for Rs. 1,764.85 (Cheque No. 154177 dated 8-11-1976 of the Quilon District Co-operative Bank) and got it signed by the Head Assistant and the Branch Manager. He has also forged the signature of Smt. Sudharma on the counterfoil of the cheque in token of having acknowledged the receipt of the cheque by her and got delivery of the cheque. He then forged the signature of Smt. Sudharma over the cheque-leaf and presented the same before the Quilon District Co-operative Bank, Quilon on 8-11-1976 itself. He obtained the money and misappropriated the same. On 3-12-1976 Sudharma contacted the workman and gave him a written request addressed to the Branch Manager for payment of the amount due to her, after adjusting her liability if any, as a surety in Chitty No. 2103/248. On the said date itself the workman obtained from Sudharma a voucher for Rs. 1,764.85 and a stamped receipt in the printed form duly signed by her with the date 3-12-1976 and promised to send the cheque by post. He fraudulently kept with him the said voucher and receipt with the dishonest intention to remove the forged payment voucher and forged stamped receipt produced by him on 8-11-1976. He had also corrected the date of payment "8-11-1976" recorded by the Branch Manager on the concerned folio of the personal ledger as 18-12-1976. He also fraudulently recorded in his own hand on the concerned folio of the personal ledger that the cheque was sent by post on " -12-1976"

on the first page and that the cheque was sent by post on "3-12-1976" on the second page, to make it appear that the payment was effected on 3-12-1976 on the basis of the papers got signed by him from Smt. Sudharma.

2. Another charge was that the workman prepared false chalans for Rs. 2,378.01 (Chalan No. C. 0829 dated 7-6-1974 for Rs. 2,147.01 and Chalan No. C. 0829 dated 7-6-1974 for Rs. 231) and caused the same to be entered in the accounts in the personal ledger folio by the concerned Junior Assistant namely Shahul Hammed to the credit of Shri K. Haridasan a prized subscriber in Chitty No. 2197/145 and thereby caused loss to the management to the above extent. Further by such fraudulent acts and by causing such false entries to be made in the personal ledger folio of the subscriber, he made the management to pay the prize money to the subscriber. Haridas complained that he doubted misappropriation by the delinquent, of the subscription amount entrusted to him for remittance in respect of his chitties. The verification of the personal ledger of the subscriber showed that the above entries were made on the basis of the chalans purported to have been made on the receipt of a cheque. The delinquent had written in the concerned ledger folio in his own hand '7th to 20th instalments adjusted'. But the verification of the records revealed that the total amount of Rs. 2,378.01 under the above mentioned chalans were not really received in the office and that Shri Shaul Hammed made the said entries in the personal ledger solely on the basis of the chalans prepared and given to him by the delinquent who was then attending to the work of preparing chalans of cheques received.

3. Yet another charge was that the delinquent collected an amount of Rs. 117.09 from Sri K. Haridasan and issued a chalan and misappropriate the amount without accounting it. The relevant chalan produced by S Haridasan on 1-2-1977 showed that the same was prepared by the delinquent, signed by him in the column provided for being signed by the cashier and bore "The cash received, seal" of the cashier.

He also misappropriated a sum of Rs. 1,700 from the management, by fraudulently cooking up loan application, promissory note, agreement, payment voucher etc. in the name of one Sri N. Raghavan Pillai, subscriber in chitty No. 2258/53A and forging the signature of the said Raghavan Pillai to make it appear that the said documents are genuine documents relating to a loan application filed by Raghavan Pillai, using the same as genuine and cheating the management and the concerned officials of the management. T verification of the accounts and the connected records revealed that the delinquent made the above said false documents, used them as genuine and got the loan sanctioned and that he prepared a cheque dated 19-5-1975 for Rs. 1,700 in the name of Shri Raghavan Pillai got the same signed by the manager Shri Gopinathan Nair and the Head Assistant Shri Thrivikraman Pillai and then took delivery of the cheque by forging the signature of Raghavan Pillai on the counter-foil, presented the same before the District Co-operative Bank, Quilon on 19-5-1975 itself and collected the amount of Rs. 1,700 and misappropriated the same.

4. The workman also committed grave irregularities and fraud in the matter of disbursement of the prize money of his wife Smt. Presanna Mohan, who happend to be a subscriber in Chitty No. 23/76. One of the sureties by name Smt. Radhamma was found to be a fictitious person. In the security note the delinquent had stated that letters for the verification of the genuineness of the surety had been sent to their employers on 25-8-1976, but it was seen that no such letters were despatched. The delinquent had undertaken in his note to produce another surety application from one Shri Sasidharan Nair, High School Assistant, duly countersigned by the concerned District Educational Officer, before actual payment of prize money to his wife was made. But he did not do so. He had signed as an attester in the surety bond executed by Sasidharan Nair and the fictitious Radhamma. It has been made to appear that the fictitious Radhamma signed the documents in the presence of one Dr. Lekshmanan, alleged to be the Medical Officer-in-charge of P.H. Centre, Thekkumbhagam and the so-called seal of the P.H. Centre was also seen affixed. Subsequently it was found out that there was no such Doctor by name Lekshmanan in the P. H. Centre at Themmumbhagam and that the seal affixed on the bond was a false one.

The delinquent collected an amount of Rs.150 on 4-10-1976 from one K. Arunthathi the wife of Shri J. Sivadasan, a subscriber in chitty No.23/76 and issued a false chalan in the name of Shri J. Sivadasan. After the delinquent himself signing the chalan in all the three places meant to be signed, by three officials of the branch and affixing the 'cash received seal', misappropriated the amount of Rs.150 thus received from Smt. K. Arunthathi without bringing the same to be accounts.

The delinquent misappropriated a sum of Rs.500 given by Shri Chathukutty, the surety in Quilon Branch Chitty No.2049/14 and issued a letter to the Headmistress, Government L.P.S., Thevalakkara written by him in his own handwriting in the official letter head of the Quilon branch and got it signed by the then Accountant Shri Muraleedharan Pillai. In the letter it has been stated that the amount of Rs.500 has been received.

The delinquent also misappropriated Rs. 100 handed over by Shri Baby Joseph, Subscriber of chitty No. Q.46 subsequently registered as chitty No. 23/76 and in lieu caused to issue and give to the office a cheque by the wife Smt. Presanna Mohan which was subsequently dishonoured. The delinquent was on earned leave for 29 days from 8-1-1977 upto 5-2-1977. But after expiry of the leave he did not report for duty.

The said charge sheet was received by the delinquent but he did not choose to offer any explanation. He was given ample opportunities to peruse all the relevant documents. Even though he did not choose to deny the charges, the management decided to conduct an independent and impartial enquiry and accordingly Shri R. Bahuleyan, Advocate, Quilon was appointed as Enquiry Officer. An elaborate enquiry was conducted with regard to the charges. The delinquent took part in the enquiry and cross-examined the witnesses. He did not examine witnesses on his side. The enquiry

officer found that charge numbers 1 to 5 and 8 were proved. The findings of the enquiry officer were accepted by the Managing Director and he decided to dismiss the delinquent. The delinquent is not entitled to a copy of the report of the enquiry officer. The order of dismissal is not liable to be set aside.

The workman filed a replication traversing the entire conditions raised by the management. In his replication it is said that there is deliberate miscarriage of justice in the manner in which the disciplinary proceedings have been initiated and conducted. Even the explanation given by him has been deliberately suppressed to strengthen the case against him. Payment of chitty amount in respect of Smt. Sobhana Sudharma was done in the normal course. The cheque was sent by post and Sobhana Sudharma must have received and encashed the same. The workman had never forged her signature. To his knowledge there was no instance of tampering with the entries or dates in any of the books or documents. Misappropriations os funds has been assumed by the management. Even Sobhana Sudharma has no case that the workman had misappropriated the amount. He had not prepared false chalan in the name of K. Haridasan. He was not responsible for the entry in the personal ledger. No loss of any sort was sustained by the organisation on this account. The workman had not cooked up any loan applications, promissary note etc. in the name of Shri Raghavan Pillai and an amount of Rs. 1700 was not misappropriated by him. The loan was sanctioned and the payment was effected by higher officials.

The payment of prize amount to his wife was done in the normal course and there was no fraud or misappropriation. He had not misappropriated Rs. 150 by issuing false chalans to Smt. Arunthathi. Omission, if any, with regard to this entry in the books of account is not due to his fault. After the expiry of the leave for 29 days he could not apply for extension of leave since he was seriously ill. By the time he recovered from his illness, the order of suspension was received by him. Hence he took no further steps to regularise the leave period. He would pray that this omission on his part may be condoned by the court. The issue referred for adjudication is "Dismissal of Shri K.P. Mohandas, Senior Assistant".

The question as to whether there has been a proper and valid enqutry and whether the findings are perverse, was heard as a preliminary issue by my learned predecessor who by his order dated 25-10-1982 held that the enquiry has been properly conducted and that the findings of the enquiry officer are supported by legal evidence. For the purpose, the enquiry officer was examined as MW1 and Exts. M1 to M3 were marked on the side of the management. The workman produced a copy of the judgement in C.C. numbers 29 to 32 of 1979 of the Special Judge, Trichur. It was on the basis of such oral and documentary evidence that my predecessor held that a proper enquiry has been conducted by the enquiry officer. Thereafter the case was posted to 29-11-1982 for evidence and arguments regarding the propriety of the punishment imposed on the workman. But no evidence has been adduced by the parties on that point.

The Kerala State Financial Enterprises Limited is an institution dealing with chitty transactions involving public money. The nature of the work demands utmost faith and honesty on the part of workers employed in the institution. Here the charges levelled against the workman are of a gravest nature such as fraud, dishonesty, creation of false documents, misappropriation of funds etc. The contention of the workman that there was no proper enquiry and that the copy of the enquiry report was not given to him etc. are found against him, by my predecessor. It is a settled law "that where there has been a proper enquiry by the management itself, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse, and has reason to believe that the management is guilty of victimisation, or has been guilty of unfair labour practice or is acting mala fide. It has also been settled that, "when a proper enquiry has been held by an employer and the finding of misconduct is the plausible conclusion flowing from the evidence adduced at the said enquiry the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide". Here the preliminary order passed by my learned predecessor is as follows:—The enquiry officer was examined as MW1 and Exts. M1 to M3 and W1 were marked.

Main grievance of the workman is that the examination in chief of the witnesses examined on behalf of the management was done by the enquiry officer himself and therefore prejudice has been caused to the workman. The enquiry officer was cross examined in details regarding this aspect. He stated that the Branch Manager of the Company was acting as the presenting officer. He denied the suggestion that one T. V. Joseph, who was deputed by the Branch manager had conducted the Chief examination. The witness admitted that he had not noted in the enquiry file the name of the person who had conducted the examination in chief. The witness asserted that it is obvious from the enquiry proceedings that the examination in chief was conducted by the Branch Manager himself. A perusal of the enquiry proceedings shows that the statement made by the witness is correct. The first witness for the management was examined on 25th of August, 1977. On that day the management was represented by the Branch Manager. On prior hearing dates the management was represented by T. V. Joseph, Senior Assistant of Quilon Branch. As a matter of fact it is immaterial whether the examination in Chief was conducted by the Branch Manager or his assistant Sri Joseph. Therefore the case now suggested by the workman that it was Sri Joseph who conducted the examination in chief even if true does not improve matters for him. The enquiry file shows that Shri Joseph himself was examined as the 13th witness for the management. He could not have been putting the questions himself and giving the answers. As such there is nothing on record to show that Shri Joseph had conducted the examination in chief of the witnesses examined on behalf of the company. The proceedings of the enquiry as well as the testimony of the enquiry

officer shows otherwise. In the circumstances, the contention of the delinquent that prejudice has been caused to him by the enquiry officer himself acting as the prosecutor has to be repelled.

"The Second contention is that the list of documents was not made available to the workman before commencement of the enquiry nor was it produced before the enquiry officer before examination in chief of the witnesses examined on behalf of the management. When the enquiry officer was asked about this aspect of the matter he stated that the delinquent has stated in annexure 13 to Ext. M2 the enquiry proceedings, that he has perused all the concerned records and documents. It has been clearly stated in annexure 13 that he had perused all the records and documents. This statement was done on 26th of February, 1977 while the examination of the witnesses commenced on 25th of August, 1977. Therefore the contention that he did not get a proper opportunity to peruse the documents does not hold good.

The next contention is that a copy of the witness schedule was given by the delinquent only one day after the examination of the witnesses. The enquiry officer stated in cross-examination that he had served a copy of the witness list on the delinquent before commencement of the enquiry. He affirmed that he had given sufficient time to the delinquent to examine the records and the witness schedule. The learned counsel for the workman has not been able to bring to my notice any circumstance to show that the statement by the enquiry officer is erroneous.

It was argued by the learned counsel for the workman, that some of the documents relied on by the enquiry officer have not been produced before this court and therefore the court is deprived of an opportunity to adjudge the legality and correctness of the findings of the enquiry officer. The non-production would not in any way improve matters for the management. This court would be examining the question whether the findings are supported by legal evidence and the decision on that question would depend on the documents produced at the enquiry stage and now placed before this court. If the finding is based on any document which has not been produced in court the sufferer would be the management and not the workman.

In fact the learned counsel for the workman has only attempted to show that findings of the enquiry officer regarding the charge relating to the misappropriation in respect of the amount due to Smt. Sobhana Sudharma is not supported by evidence. The case of the management is that the delinquent had prepared a cheque for the amount due to Sobhana Sudharma and had encashed the same. This was done by him on 8th November, 1976. When Smt. Sobhana Sudharma turned up on 3-12-1976 he obtained a voucher and stamped receipt from her and promised to send the cheque by post. He kept the voucher and receipt with him with the intention of substituting the same for the forged voucher and receipt which he had kept in the file. He had also corrected the date of payment which was originally shown as 8-11-1976 to 18-12-1976. He had also made

entries to show that the cheque was sent by post. The payment was sanctioned by the superiors in office of the deliquent and the cheque was also signed by his superiors. The officers concerned have given evidence before the enquiry officer. It is now argued by the learned counsel for the workman that the cheque which is alleged to have been encashed by the workman has not been exhibited before the enquiry officer or before this court and therefore the conclusion that the workman had misappropriated the amount by encashing the cheque is not supported by evidence. It has to be admitted that the cheque in question is the most important piece of evidence regarding the charge of misappropriation and the workman would have been entitled to the benefit of the doubt if the management had not caused production of the cheque in a criminal proceeding. As far as a domestic enquiry is concerned the enquiry officer has to take note of all the attending circumstances before coming to a conclusion regarding the guilt or innocence of the workman. In this case, there is evidence to show that on 2-11-1976 Smt. Sobhana Sudharma had applied for refund of the amount due to her and that on 8-11-1976 a cheque has been issued to her. Somebody has signed on the innerfoil of the cheque in token of having received the cheque. The workman has no case that the cheque was taken by some other member of the staff. The cheque was in the possession of the workman. Therefore the check was either taken by himself or he knows the person who had taken the cheque. The cheque was encashed. The workman's conduct would indicate that the person who took the cheque was himself and none else. He had corrected the date of payment as well as made an entry to the effect that the cheque was sent by post. When the management brought out all the above circumstances in evidence, the workman should have examined himself and stated that he had not done any of the acts alleged against him. But he has omitted to do so. The circumstances brought out in evidence when considered along with the fact that the workman had not offered himself for cross examination, go to show that the case of the management regarding misappropriation of the amount due to Smt. Sobhana Sudharma is true.

Regarding the remaining charges, the learned counsel for the workman did not make an attempt to show that the findings of the enquiry officer are not supported by legal evidence. Lastly it has also got to be stated that when charges were framed by the management, the workman had not filed a reply denying the charges or offering his explanation for the allegations. Before the enquiry officer also he did not file a statement explaining the facts and circumstances shown in the memo of charges. He did not examine himself. Thus before coming to this court, the workman had not disclosed what his case is regarding the various charges levelled against him. It was represented by the learned counsel for the workman that he did not submit an explanation pleading his innocence, out of fear that the same may cause prejudice to him before the criminal court. But the learned counsel did not show as to how prejudice would be caused to his client in the criminal trial if he had filed a statement pleading his innocence.

As it is I feel little hesitation in coming to the conclusion that the enquiry has been properly conducted and that the findings of the enquiry officer are supported by legal evidence. Therefore the case is posted to 29th November, 1982 for evidence and arguments regarding the propriety of the punishment imposed on the workman".

It follows that there was a proper and vaild enquiry conducted by the enquiry officer and that there has been no violation of the principles of natural justice.

The nature of the evidence adduced in the case would further show that the findings of the enquiry officer are not in any way perverse. It is seen from the records that the workman has acted fraudulently in dealing with money matters. He had forged signatures of chitty subscribers, had created false loan application, promisory notes etc. and had misappropriated the funds. So also it is alleged that he had received amounts from certain subscribers which he failed to bring to accounts. Ext. W1 copy of the judgement passed by the Special Judge, Trichur is produced by the workman to prove that he has been acquitted of the criminal charges levelled against him, for misappropriation, falsification of accounts etc. At the same time a perusal of the judgement would show that Smt. Sobhana Sudharma the prized subscriber had not reclly received the amount due to her and that the cheque issued to her was found in the possession of the workman. So also from Ext. W1 it can be seen that Sri N. Raghavan Pillai had deposed that he had not filed any loan application to the institution. But the records would show shat a loan was caused to be sanctioned to Mr. Raghavan Pillai and that the amount was also seen disbursed to him on the basis of a loan application. The workman was acquitted of the criminal charges mainly on the ground that the disputed documents and signatures were not sent to get the opinion of the expert. The fact that he has been acquitted in the criminal case by giving such benefit of doubt to him would not lead to the irresistable conclusion that the allegations levelled against him are false. Acquittal in a criminal case by itself is not a ground to hold that the findings reached by the enquiry officer on the basis of the evidence adduced before him are perverse. The nature of the offences committed by the workman are such that, the management decided to dismiss him from service, on the ground that the retention of such persons in the institution would be a potential danger to the institution itself. Hence it cannot be held that the management is guilty of victimisation or has been guilty of unfair labour practice.

The next question to be considered is regarding the propriety of the punishment imposed on the workman. It is true that the workman has been acquitted of the criminal charges levelled against him on the ground that the disputed documents and signatures are not proved by expert evidence. But as stated earlier, his acquittal in the criminal cases would not by itself lead to the conclusion that the charges levelled against him by the management are unfounded. This is a financial insitution and the management has lost confidence in the workman. When the nature of the charges

levelled against him is considered, it is certain that the retention of the workman in the institution will be a constant danger to the institution itself. The management can no longer trust him especially since the position to be occupied by him is one involving important and vital responsibilities which demand utmost honesty and trustworthness. However, the workman has put in seven years of service and this is the first occasion on which he is alleged to have committed the misconduct. He has been acquitted in the criminal case also. Considering these facts, I find that the punishment awarded should be reduced to one of discharge.

In the result I pass an award reducing the punishment against Shri K.P. Mohandas into one of discharge. The parties shall bear their costs.

Dictated to the Confidential Assistant, transcribed by her, corrected and signed by me this the 10th day of August, 1983.

This award shall came into force on the expiry of thirty days from the date of its publication in the Government Gazette.

C. Visalakshi Amma,
Presiding Officer.

Appendix

Witness examined on the side of the Management

M. W. 1—R. Bahuleyan

Exhibits marked on the side of the Management

Ext. M1—Photostat copy of the Memo of charges

Ext. M2—Enquiry proceedings

Ext. M3—Enquiry report.

Exhibits marked on the side of the Workman

Ext. W1—Copy of judgement in C. C. Nos. 29 to 32/79 of the Special Judge, Trichur.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1031|83|LBR. *Dated, Trivandrum, 13th September 1983.*

The award of the Labour Court, Quilon in respect of the dispute between the President, Chirayinkil Kaithari Neithu Sahakarana Sangam, Ltd. No. 3404, Chirayinkil and their workmen represented by the Secretary, Kerala Co-operative Employees' Union Peroorkada, Trivandrum-5 received by Government on 8-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretry to Government.

IN THE LABOUR COURT, QUILON

Present:

Smt. C. VISALAKSHI AMMA, B.A., B.L.
Presiding Officer

Monday the 5th day of September, 1983|14 Bhadra, 1905

In

INDUSTRIAL DISPUTE No. 6|82

Between

The President,
Chirayinkil Kaithari Neithu
Sahakarana Sangam, Ltd. No. 3404,
Chirayinkil. *Management.*

And

The Secretary,
Kerala Co-operative Employees' Union,
Peroorkada, Trivandrum-5. *Union.*

Representations:

Shri M. A. Shamsudeen,
Advocate,
Trivandrum. *For the Management*

M/s. R. Lakshmana Iyer &
M. S. Vijayachandra Babu,
Advocates,
Trivandrum. *For the Union*

AWARD

This is a reference of a dispute between the management of Chirayinkil Handloom Weaver's Co-operative Society Ltd. No. 3404, and their workman Shri R. Madhavan, Depot Manager. The reference was made as per G. O. (Rt.) No. 237/82/LBR dated 8-3-1982 and the issue referred for adjudication is "Termination of Service, Shri R. Madhavan, Depot Manager."

2. Along with the reference a copy of the petition filed by the District Secretary, Trivandrum of the Kerala Co-operative Employees Union, for and on behalf of the worker requesting his re-instatement was also filed in this court. In the petition it is stated that the worker is not guilty of the charges levelled against him, that there was neither any misappropriation of money, nor any destruction of records by the worker, that the worker has already deposited the deficit amount, and hence he is entitled to be re-instated in the service of the society.

3. The management filed a written statement contending that the worker has showed dereliction of duty at many times and that he behaved in disobedient manner to the president and members of the executive committee and members of the society. The worker had misappropriated the funds of the society and had also either destroyed or taken away the relevant records to destroy evidences. He voluntarily left the employment from 30-3-1980 and was absenting continuously. By his failure to attend his duties he had caused heavy loss to the society. So he was given show cause notice on 1-7-1980. But he gave reply to the same merely traversing the show cause. The explanation submitted by him was considered by the executive committee and found to be unsatisfactory. He was given a further notice, proposing the punishment of retrenchment from the service for the better interest of the society and its members. For that also, he gave an untenable and irrelevant reply. That explanation was rejected by the committee and ultimately he was retrenched from service as per notice dated 25-9-1980 with retrospective effect from 30-3-1980 the date on which he left the employment himself with all benefits for which he was entitled. It is therefore contended that the claim for reinstatement, now raised by the worker has only to be rejected.

4. The worker filed a replication traversing all the contentions raised by the management in its counter statement. In his replication he would contend as follows:—While the worker was employed in the service of the management

society, a memo of charges dated 30-6-1980 setting forth nine charges was served on him. He submitted a written statement of defence dated 15-7-1980 denying the charges levelled against him. The charges were all false and fabricated and no enquiry was conducted to prove the charges against him. On 20-8-1980 the Secretary of the management society directed the workman to show cause why he should not be dismissed from service. The Secretary of the Management Society has no power to issue such a show cause notice. The workman submitted his interim reply on 26-8-1980 and the final reply on 9-9-1980. Without considering any of the charges and the replies submitted by him, the Secretary of the management society as per his order dated 25-9-1980, dismissed him from service with effect from 30-3-1980. The dismissal is illegal and is unsustainable, since the charges against him have not been proved by conducting an enquiry. The findings are therefore arbitrary, unfair and based on no evidence. The Secretary is also not competent to dismiss the workman from the service of the society and as such the order of dismissal is in violation of the rules framed under section 80 of the Kerala Co-operative Societies Act. There was also no misappropriation or any destruction of records by him. The allegation that he voluntarily left the employment of the society is also denied. He was reporting for duty on every day but the secretary was not permitting him to mark the attendance or to attend to his duties. His services were terminated as a punishment and there was no question of retrenchment. The order dated 25-9-1980 is not an order of retrenchment, but one of dismissal from service. This dismissal from service is an act of victimisation. Ever since the dismissal he remains unemployed. All his efforts to get a job have failed. He is therefore entitled to be reinstated with full backwages and all service benefits.

5. After the parties filed their pleadings the case was posted for enabling the parties to produce the records and also for evidence. The case stood posted for evidence to 22-7-1983 on which date both sides were not ready. Thereafter the case was adjourned to 11-8-1983 on which date also the management was not present. The management was therefore set ex-parte and the worker who was present was examined as WW1. Exhibits W1 to W4 were also marked.

6. Ext. W4 would clearly show that the worker was removed from the service of the society with effect from 30-3-1980. According to the society this is only a retrenchment but the worker's contention is that this would amount to a dismissal from service. However Ext. W2 would show that a number of charges such as misappropriation of society funds, destruction of records, insubordination, dereliction of duty etc., were alleged against the worker for which he had submitted his explanation. His explanation is stated to have been considered by the committee which found the same as unsatisfactory and hence he was removed from service as Ext. W4. It is evident from the records that the show cause notice was issued to him by the secretary of the management society and that the retrenchment order was also issued by the secretary. At the same time there is nothing in evidence adduced by the management to show that the secretary was delegated with the authority to issue the show cause notice or the dismissal order. As per the rules only the board of

management is competent to issue a dismissal order on the worker. There is also no evidence to show that a domestic enquiry has been conducted against the worker so as to prove the genuineness of the charges levelled against him. Without conducting an enquiry, he was dismissed from service merely on the ground that the explanation submitted by him was not satisfactory. In the written statement nothing is stated to show that any enquiry has been conducted in the matter. So long as the charges levelled against him are not proved the order of dismissal passed against the worker is not proper. In this court also the management remained ex-parte and hence no question of the management seeking to sustain their action by adducing evidence arose. In these circumstances it has to be held that the termination of service of Shri R. Madhavan is unjustified. Consequently the worker has to be reinstated with backwages and other consequential benefits.

In the result I pass an award directing the management to reinstate the worker Shri R. Madhavan, with backwages and other consequential benefits which he would have been entitled had his services not been terminated.

This award will take effect on the expiry of 30 days of its publication in the Kerala Gazette.

C. VISALAKSHI AMMA,
Presiding Officer.

APPENDIX

Witness examined on the side of the Workers:

WW1 R. Madhavan

Exhibits marked on the side of the Worker:

Ext. W1 Charge sheet issued to Sri R. Madhavan
Ext. W2 Reply to the charge sheet submitted by Sri R. Madhavan
Ext. W3 Postal acknowledgement signed by the Secretary of the Society on 18-7-1980.
Ext. W4 Dismissal order dated 25-9-1980 issued to Sri R. Madhavan.

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Kerala Gazette No.45 dated 15th November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 970/83/LBR. *Dated, Trivandrum, 17th August* 1983.

The award of the Industrial Tribunal Alleppey in respect of the dispute between the Management of K. J. Thomas, Joint Managing Director, Pullikkanom Tea Estate Ltd., Vagamon, Peermade and their workmen represented by (1) The General Secretary, Kerala Plantation Labour Union, Vandiperiyar (2) The General Secretary, High Range Plantation Employees Union, Elappara (3) The General Secretary, Peermade Thottom Thozhilali Union, Peermade (4) The General Secretary, Peermade Taluk Estate Labour Union, Elappara (5) The General Secretary, Estate Staff & Employees Union of South India, Kottayam (6) The General Secretary, Estate Staff Union of South India, Kottayam and (7) Malayalam Plantation Employees Union, Elappara (Additional Union impleaded) received by Government on 28-7-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey
(Dated this the 1st day of June 1983)

Present :

Shri K. KANAKACHANDRAN
Industrial Tribunal

In

INDUSTRIAL DISPUTE No. 6/1979

Between

K. J. Thomas, Joint Managing Director, Pullikkanom Tea Estate Ltd., Vagamon, Peermade

And

(1) The General Secretary, Kerala Plantatio Labour Union, Vandiperiyar (2) The General Secretary, High Range Plantation Employees Union, Elappara (3) The General Secretary, Peermade

Thottom Thozhilali Union, Peermade (4) The General Secretary, Peermade Taluk Estate Labour Union, Elappara (5) The General Secretary, Estate Staff & Employees Union of South India, Kottayam (6) The General Secretary, Estate Staff Union of South India, Kottayam and (7) Malayalam Plantation Employees Union, Elappara (Additional Union impleaded)

Representations:

Rama Shenoy, Advocate, T. D. Road, Ernakulam	..	For *Management*
Shri Joseph Makiel, Advocate, Kottayam-2		
Shri C. K. Thambiappan, Advocate, Alleppey	..	For *Unions* 3, 4, 5 and 7.

AWARD

This industrial dispute was taken to file on the basis of the Government Order G. O. (Rt) No. 340/79 LH dated 7-3-1979. The issues referred for adjudication are:—

(1) Bonus for 1977.

(2) Lock-out declared by the management from 20-7-1978 to 2-1-1979.

(3) Eligibility for lock-out wages.

(4) Denial of full wages from 4-9-1978 to 19-10-1978.

In response to the notice from this court, the union numbers 3 to 6 entered appearance and unions numbers 1 and 2 were declared ex-parte. On 21-6-1979 another union viz., Malayalam Plantation Employees Union, Elappara filed an application to get themselves impleaded as an additional party in the dispute and the same was allowed by this Court on 19-7-1979.

On behalf the unions No. 3, 4, 5 and 7 claim statements were filed. The Management had filed counter statement also. On the basis of respective statements filed by the parties in this dispute as also on the evidence adduced, I shall discuss each issue separately in this award.

(1) Bonus for the year 1977.

In the claim statement filed by the Unions it is stated that the employees of the Pullikkanam estate are entitled for 20% of their wages as Bonus for the year 1977 as in the manner they got in the previous year. According to them production in the year 1977 was comparatively higher than that of the previous year and hence they are entitled for the same rate of Bonus-maximum Bonus permissible under the payment of Bonus Act. The Management declared Bonus for the year 1977 very lately holding that the allocable surplus permitted them only to pay 11% of the wages as Bonus for the year in question.

Regarding the accounting year, the Management and unions have dispute. Unions claim that the Accounting year in so far as Pullikkanam estate in concerned is from January to December every year. But the Management says that accounting year starts from April 1st and ends on 31st March in the succeeding year. Ext. M1 and Ext. M36 which are the Management company's annual reports would show that the accounting year in so far as Pullikkanam estate in concerned is from 1st April to March 31st. Therefore there is no scope for any further controversy in the matter. The Bonus dispute now under adjudication thus relates to the accounting year 1977-78.

The Management states in the counter statement that during the year 1977-78, the workers in the estate were entitled for only 11% bonus since the balance sheet audited by the Chartered Accountant made provisions for bonus only at the rate of 11%. The bonus was calculated strictly in accordance with the provision contained in the payment of Bonus Act (for short Bonus Act). The workers refused to accept the Bonus offered by the Management and their claim was for 25% of the wages as Bonus.

Ext. M1 is the Annual report and statement of Account for the year 1977-78 in respect of Management estate. Ext. M2 series are the Balance sheet and profit and loss Account for the year ending on 31-3 1978. Ext. M36 series are the annual reports and statements of account for the years 1976-77, 1978-79 and 1979-80. While having a glance at Ext. M36 statements of account for the year 1976-77, it can be seen that production in the estate was comparatively more than expected in that year. The actual production of Tea was 312010 Kg. in the year 1976-77. But the estimated production was only 300000 Kg. Ext. M1 shows that during 1977-78 also, actual production was more than estimated. As against the estimated production of 3.5 lakhs kg. of Tea, actual production was 3 89,162 kg. Despite this record production, the Management could declare only 11% Bonus to the workers for the accounting year 1977-78. The workers grievances is also mainly on this. How this was happened. One may naturally have suspicions on the veracity of the statements of account produced by the Management. The reason given by the Management for such low rate is the increase in cost of production. The cost of production for one kilogram of Tea in the year 1976-77 was only Rs. 7.79 and it rose to Rs. 9.54 in the year 1977-78. The following details which are revealed through Ext. M1 may lead one to suspect the veracity of the statement given by Management. There are over spending on several items and most of them are highly disproportionate.

Few examples are:-

	1976-77 Rs.	1977-78 Rs.
Cumbly, Bonus and way expenses	1,59,238.05	3,73,456.30
Manuring	2,72,617.69	5,03,260.80
Plucking	3,59,699.73	6,26,216.89

The above figures will show that expenses incurred were highly disproportionate comparing those with the expenditure for the previous year. In this context it would be pertinent to note the area under cultivation for the year in question and of the previous year. It was more or less the same. With this materials on records, the unions could have moved this court for getting clarification on several items of expenditure. Over spendings were substantial and in higher proportion. The total profit was reduced to Rs. 2.6 lakhs from Rs. 12.53 lakhs in the previous year. Despite these, the unions remained silent and they did not make any attempt to get clarification on each item of expenditure. In these circumstances, I am of the view that the Management is entitled for the benefit of presumption regarding the accuracy of balance sheet and profit and loss account by virtue of Sec. 23 of the Bonus Act. While relying on Ext. M1, M2 and M6 it can only be hold that the workers are entitled for 11% bonus for the year 1977-78 Therefore the issue referred for adjudication in relation to the bonus for the year 1977-78 is answered in favour of the management.

Validity of lock-out.

One the question of propriety and legality of the lock-out the learned counsel for the union Mr. Thampi Appan urged that apart from the other factors, the lock out was not justified in view of the provisions contained in Sec. 22 and 23 of the Industrial Dispute Act. According to him there is clear prohibition against the declaration of lock-out during the pendency of conciliation proceedings. The learned counsel pointed out that the lock-out was declared on the same date on which conciliation conference was held at Trivandrum at the instance of the Joint Labour Commissioner. As per Sec. 23 (a) of the Industrial Dispute Act there is a general prohibition of lock out during the pendency of conciliation proceedings. This allegation of the union was negatived by the counsel for the management Sri R.. a Sh..ey According to him the lock-out was declared not at any time during the conciliation conference. The proceedings at Trivandrum on 19-10-1978 was only a joint conference and not a conciliation conference. According to him the joint conference and conciliation meeting are distinct and different and therefore the union cannot say that lock-out is hit by Sec. 23 (a) of the Industrial Dispute Act. It is further submitted that assuming that there is no difference between joint conference and conciliation conference, then also the lock-out is not hit by Sec. 23 (a), in view of the fact that Subsection contemplates only about the pendency of the conciliation proceedings before a 'Board' and not before any other conciliation authorities. According to the learned counsel for the management, since the work in the estate is not a public utility service, Sec. 22 of the Industrial Dispute Act is also not applicable. Only if the estate work is having the nature of public utility service, any declaration of lock-out in violation of Sec. 22 (2) (d) will be void. The contention raised by the counsel for Management is well founded and therefore I am not attaching much weight on the contention raised by the counsel for the union on the question of law raised.

The management declared the lockout with effect from 20-10-1978 in the estate. On the previous day there was a conciliation conference at Trivandrum which was convened by the Joint Labour Commissioner. It is contended by the management that in that conference the management offered 4% of the wages as recoverable advance in addition to the already offered bonus at the rate of 11%. The unions were not agreeable to accept that offer. By taking into account the failure of talks at the joint conference, the management decided to declare lock-out of the estate with effect from 20-10-1978. Accordingly notice of lock-out was affixed in the estate on 19-10-1978 itself. Ext. M26 is the notice declaring lock-out in the Estate. The union's contention with regard to the lock-out is that it was virtually a threat against the workers for their non-acceptance of the offer made by the management on the bonus issue. According to the union there was no existence of any circumstance warranting the extreme step of declaration of lock-out. It is true that the workers were agitating for enhanced bonus from September 1978 onwards but it was without affecting the normal working of the estate. Before starting of the work at 8 a.m. and after finishing the work at 4. p. m. each day, the workers used to assemble at the muster grounds and shout slogans. That much act was done by the workers to highlight their grievance on the question of bonus. This type of peaceful agitation did not make any impact on the working of the estate. They were doing the work at a rate more than what they are required to do as per the terms of agreement on work norms. The workers were plucking leaves more than at standard rates and sometimes it was at 'over' and at 'high over'. (The terms 'over' and 'high over' are used in the estate to signify the rates of plucking of leaves beyond the rate of minimum standard rate). Norms of work and minimum wages are fixed on the recommendation of the Plantation Labour Committees (in short PLC) from time to time and the workers are under obligation to do the work in terms of the work norms fixed in PLC settlement. If they are doing work at standard rate they are entitled for minimum wages and if quantum of work is at 'over' and 'high over' rates the workers will be entitled to get more than the minimum wages. The position being so, there is no reason for doing the lesser work on any day. If they do lesser work, they will get only the lesser wages.

Ext. W2 is the wage slip in respect of one workman Mathew (Labour No. 866). This wage card is maintained by the estate and retained by the worker. It can be seen that during the month of September 1978 plucking was not at all at lower rate. In addition to the standard rate, plucking was made at 'over' and 'high over' rates also.

MW1 is the Superintendent and Chief Executive of the Pullikkanam Estate. In the cross-examination he had admitted that PLC settlement is applicable to the employees of Pullikanam Estate. During the months of January, February and August, a worker need only to pluck 10kg. of leaves on a working day because those are lean months. As per the work norms fixed in the PLC settlement a worker has to pluck 12kg. of leaves per day during the 'rush' periods. MW1 has stated that although such

minimum quantities are fixed on the basis of settlement, with that quantity of plucking, an estate can not survive. He has admitted the entries made in Ext. W2 wage slips. He has also admitted about the wrok done at 'over' and 'high over' rates by the employees during the period of September 1978 and till the declaration of lock-out viz., on 20-10-1978. From this it is clear that the production rate in the estate was not at all alarming as in contended by the management. Therefore the allegation of short fall in production cannot be accepted in the face value and moreover that cannot be a valid ground for declaring the lock-out.

Whether any other situation was in existence warranting the drastic steps of lock-out in the estate: this has to be looked into with reference to allegation of violence on the part of workers. Although the Management alleges violence on the part of the workers, no evidence is forthcoming. They have adduced evidence to show that they had moved the High Court of Kerala by filing a writ petition. The purport of that writ petition was for seeking Police protection to ensure the normal working of the estate. In Ext. M4 order dated 15-11-1978 clear direction was issued to give adequate police protection to the Management for smooth working in the estate. Despite this Ext. M4 order, the Management continued the lock-out till 2-1-1979. After the issuance of Ext M4 order by the High Court on 15-11-1978, no complaint was raised by the Management against police authorities for not rendering adequate protection. The Management failed to explain under what circumstances they continued the lock-out in the estate till 2-1-1979. Before obtaining Ext. M4 order or after that, no untoward incidents were reported to the police by the management. Nor even a private complaint was filed before police against any of the employees. There was no occasion wherein police had to go to the estate to set at right any sort of violence on the part of the workers. Therefore, according to me, the purport behind seeking police protection through an order of the High Court was intended to fabricate evidence to show later that the affairs of the estate were in a mess on account of the violent activities of the workers. The management has made an attempt to put up a case by pointing out an incident in which a single worker was involved. Evidence was adduced on the proceedings initiated against that worker. It is alleged that one worker viz., Mathew had made attempt to assault MW1. Charges were framed against him and domestic enquiry was also conducted. In the domestic enquiry proceedings, the concerned worker did not participate in the enquiry. Any how that resulted in his dismissal. Since an industrial dispute was pending then an approval application was also filed before this court and that was allowed. I do not think the circumstance which lead to the dismissal of a workman has any bearing to conclude that the situation in the estate was beyond all control. There might have been stray incident like this in which a worker was involved in some misdeeds. Ext. M15 proceedings shows that the action against the dismissed workmen was initiated after the lifting out of the lock-out in the estate. From Ext. M15 it can be seen that there was

no assault on the estate Superintendent but there is only allegation of attempt to assault. There was no criminal complaint against that individual workman. According to me this kind of stray incident is not at all a ground for declaring lock-out in the entire estate.

The management also failed to prove that the situation in the estate was beyond all their control and only on account of that uncontrollable situation, they were compelled to declare the lock-out. It is the case of the management that there was go-slow on the part of the workers. While making a comparative study of the work-load with reference to the norms fixed by the PLC, it can be seen that the workers were doing the normal routine work. They might not have shown much enthusiasm in achieving in higher target in production. Apart from this lower production rate, the management did not show any other serious lapse on the part workers. What are the circumstances which compelled the management to seek Police protection are not evident from any records. From Ext. M4 order produced by the management it can be seen that petitions were sent to the District Collector and District Superintendent of Police, Idukki. This court is not in a position to know what were the contents of those representations since those petitions were not produced. In the High Court the management pleaded that despite the representations given to the district authorities, no actions were taken and therefore they had to approach the High Court for getting Police protection. It can be seen that in Ext. M4 proceedings the unions did not participate and virtually it was an ex-parte order. If the management could prove the allegations of violence on the part of the workmen and the circumstances under which such Police protection was sought, this court would have been in a better position to appreciate the facts. No other materials are also forthcoming showing the grave situation prevailing in the estate just before the declaration of lock-out.

In the above circumstance I pass an award holding the lock-out declared by the management from 20-10-78 to 2-1-79 as illegal.

(iii) *Eligibility for lock-out wages*

In view of my finding that the lockout declared by the management is illegal, in normal course, the workmen will be entitled to full wages. Considering the present financial position of the Tea Industry, I think it will not be fair to direct the Management to pay the full wages to the workmen during the period of lock-out. Therefore an award is passed holding that the workmen are entitled for half of the wages during the lock-out period. For the purpose of fixation of wages, the daily wage will be the minimum wage fixed by the plantation Labour Committee for each category of workmen for the relevant period.

(iv) *Denial of full wages from 4-9-1978 to 19-10-1978*

The management's contention is that the workers adopted go-slow tactics during the period from 4-9-1978 to 19-10-1978. After the demonstration they used to go to the work spot only after 1 or 1½ hours from the normal reporting time of 8 A. M. As per the standing orders, the workers had to

report for duty at 8 A. M. and have to work till 4 P. M. They will have an interval of 1 hour after 12 in the noon for lunch. Ext. M7 series (19 in numbers) are the pocket diaries submitted by the Supervisors of the estate to the Superintendent of the estate and according to Management those will show the details regarding late attendance and go-slow tactics adopted by the workers. Most of the Ext. M7 series diaries are written in Tamil language and therefore this Court is not in a position to understand what exactly the contents of those documents. No attempt was also made by the management to elucidate the details contained in Ext. M7 diaries. Surprisingly not even a single Supervisor was examined before this Court to prove at least one of the diaries. These Ext. M7 Diaries are the basic materials to show the hours of work done by each worker. The management also produced Ext. M14 series which are the list submitted by division conductors and tea makers showing the details of working hours lost by each worker because of the late attendance during September-October 1978. On the basis of Ext M7 diaries, Ext. M14 lists were prepared. The contention of the management is that since the workers had accepted the wages on the basis of deductions made therein, there cannot be any contraversy now. The workers were accepting the wages in proportion to the work they had done during the period in which there was go-slow. Attempt was made by the Management to prove Ext. M7 and M14 only by means of identification of hand writings when MW3 was examined before this court. MW3 was only a head clerk in the office.

The case of the workmen is that as per the work norm fixed in the tea plantations, a worker is under obligation to pluck a minimum quantity of 12 kg. per day. However the workers used to pluck more than the minimum quantity. If they are plucking more than the minimum, they are entitled for more wages than at the rate of minimum wages. January, February and August are treated as lean months in so far as tea estates are concerned and during these months a worker needs to pluck only 10 kg. per day. The case of the union is that during the relevant period, the workers had plucked more than at the minimum rate. Ext. W2 will show that during September 1978, the concerned worker Mathu had plucked green leaves at standard rate, and also at 'over' and 'high over'. With reference to Ext. W2, the version given by MW1 in the course of his testimony before this Court regarding target to be achieved by each worker is as follows:—

> ജനുവരി ഫെബ്രുവരി മാസങ്ങളിൽ ഒരു തൊഴിലാളി 10 കി. കൊളുന്തെടുത്താൽ മതിയല്ലോ (ചോ) അത്രയും ആവശ്യം ഇല്ല. (ഉ) മററുള്ള മാസങ്ങളിൽ മിനിമം ഒരു തൊഴിലാളി 12 കി. വരെ തേയില കൊളുന്തു പറിച്ചാൽ പോരെ (ചോ) മിനിമം 12 കി. എന്നു വച്ചിട്ടുണ്ടെങ്കിലും അപ്രകാരം തോട്ടത്തിനു മുന്നോട്ടുപോകാൻ പററില്ല. എക്സിബിററ് ഡബ്ളിയു. 2 ഞങ്ങൾ ഇഷ്യു ചെയ്യുന്ന വേജ് സ്ലിപ്പ് ആണ്. എക്സിബിററ് ഡബ്ളിയു. 2-ൽ രേഖപ്പെടുത്തിയിരിക്കുന്ന കാര്യങ്ങൾ ശരിയാണ്.

From the above it can be seen that although the working hours are said to be specified in the standing ordres, (But no such time is fixed in Ext. M35) during the hours of work, a worker is liable to pluck only the minimum fixed as standard rate, that is 10 kg. during the lean season and 12 kg. during the rush season. There is no case for the management that due to the go-slow by the workmen they were doing lesser quantum of work than under normal situation they are expected to do. For getting the minimum wages as fixed by the PLC they need only to pluck 12 kg. of green leaves during the rush reason. There is no evidence before me to show that the pluckers were lagging behind the minimum quantum of work fixed by the management. It is not in controversy that the workers were agitating for enhanced wages. If the workers were doing lesser work, the sufferers were also themselves because they would be getting lesser wages for lesser work. If the plucking goes beyond standard rate, they will get proportionately higher wages if the quantum of plucking, in the words of management, is 'over' or 'high over'. If the workers are not doing the work at the standard rate, definitely, the Management is entitled to reduce wages. But if the fact proved is otherwise, the Management is not justified in deducting the wages.

In order to show the deductions, the management produced the lists showing hours of work done by each worker as also the amount deducted from the wages. From Ext. M28 and M29 it can be seen that the unit for 1 hour work is the average of a day's minimum wage. It is not at all on any proportion taking into consideration plucking made beyond standard rate, what are known as 'over' and 'high over'. The management has no case that the deductions were made by taking into account the normal wage for a day which is inclusive of wages for 'over' and 'high over' work. Ext. M28 and Ext. M29 only show the grand total of the loss of working hours for the month of October 1978 in so far as each employee. Even for the preparation of Ext. M28 and M29, as already stated, the basic materials are Ext. M7 diaries submitted by the Supervisors which were not proved at all. From the company's annual report evidenced by Ext. M1 and M36 series, although there was decline in the production in the relevant year compared to the previous year 1977-78, there is no case for the management that the total production was lesser than at the standard rate of production. There is also no case for the management that the workmen were doing work at lesser rate than the standard rate fixed by the company. Therefore the contention justifying the deduction of wages is not acceptable in view of the fact that there is no proof to show that the workers were doing the lesser work than fixed by PLC. The union is also not denying the fact the workers used to demonstrate every day after assembling at the muster ground. According to union, such kind of demonstration was without affecting anyway the production. It has to be proved that on account of that sort of agitation or demonstration the workers were doing lesser work than they were expected to do in the normal course. In the absence of any proof on that behalf, I am of the view that the deductions made by the management is quite irrational. I declare that the deduction of wage made for the period from 4-9-1978 to 19-10-1978 is illegal and the workers are entitled for the balance of the wages which had

been deducted by the management. The basis for determining balance of wages will be the entries in wage cards issued by the Management for the relevant period (Similar to Ext. W2) to the workmen. For the minimum work at standard rate, minimum wages fixed by the PLC shall be given to each workman. In the case of those who had not done the work at the minimum standard rate, the Management is entitled to make proportionate deductions.

The award is passed accordingly.

K. KANAKACHANDRAN,
Industrial Tribunal.

Appendix

Witnesses examined on the side of the Management:—

MW1 Shri. E. K. George
MW2 ,, Abraham, K. Thomas
MW3 ,, M. T. Thomas

Exhibits maked on the side of the Management

Ext.	M1	Director report and statement of Accounts for the year 1977-78.
,,	M2	Copy of balance-sheet as at 31-3-1978.
,,	M3	Notice dated 8-9-1978 displayed on the notice board.
,,	M4	Certified copy of the judgment dated 15-11-1978 in O P. No. 3794/78-B of High Court, Kerala.
,,	M5	Payment of Bonus Register.
,,	M6	List of worker who received the Bonus at the rate of 11%.
,,	M7	Series. The diaries submitted by the Supervisor.
,,	M8	(a&b) Correspondance Books of Field Staff for the period 1978-79.
,,	M9	Series. Copy of the letter addressed to the workmen sent to the Deputy Labour Officer, Peermade from time to time.
,,	M10	Pocket check-roll for the period from April 1978 to September 1978.
,,	M11	(a) Pocket check-roll for September 1979.
,,	M11	(b) Pocket check-roll for October 1979.
,,	M12	Pocket check-roll for 1977.
,,	M13	Check roll for 9/77 and 10/77 maintained in Upper Division.
,,	M14	Series. Report on the working time of the workmen.
,,	M15	Domestic enquiry report.
,,	M16	A list showing the declaration from the wages of the workmen during the strike.

Ext. M17 Copy of a letter dated 16-1-1979 addressed to the Deputy Labour Officer, Peermade.

,, M18 List of workers showing details of working hours lost by late attendance during September and proportionate wage deduction.

,, M19 Copy of the letter dated 5-9-1978 addressed to the Deputy Labour Officer, Peermade.

,, M20 Printed notice of the Unions.

,, M21 Copy of the letter dated 18-9-1978 addressed to the Deputy Labour Commissioner, Kottayam.

,, M22 Copy of the notice dated 16-10-1978 displayed on the notice board.

,, M23 Copy of the notice dated 14-10-1978 displayed on the notice board.

,, M24 Copy of the letter dated 13-9-1978 addressed to the Deputy Labour Officer, Peermade.

,, M25 A letter dated 4-9-1978 addressed to the Superintendent of the Estate from the Watcher, Vakkam.

,, M26 Copy of the notice dated 29-8-1978 displayed on the notice board.

,, M27 A photostat copy of the notice dated 19-10-1978 displayed on the notice board.

,, M28 A list showing the proportionate wage cut effected during the strike by the workman in Puthucad Division.

,, M28 (a&b) Check-roll's for the periods 1978-79.

,, M29 A list showing the proportionate wage cut effected during the strike by the workmen in Pachayakadu Estate.

,, M29 (a) Despatch Register.

,, M30 Pocket check-roll for the period from 4/78 to 9/78 maintained in Pachayakad Division.

,, M30 (a) Journal for the period 1978-79.

,, M31 Pocket check-roll for the period from 10/78-79 mnintained in Pachayakad Division.

,, M31 (a) Register showing the payment of Bonus Advance, holiday wages, X' mas Advance and store cash.

,, M32 Pocket check-roll for the periods 4/79 to 10/79 maintained in Pachayakad Division.

,, M32 (a) Details of the Bonus worked out.

,, M33 Bonus payment Register for 1978 maintained in Pachayakad Division.

,, M33 (a) The working sheet prepared by the Chartered Accountant,

,, M34 'Kurip' Books 19 in numbers.

,, M35 Copy of standing order,

Ext. M36 (a) Annual Report and statement of Accounts for 1976-77.
,, M36 (b) Annual Report and statement of Accounts for 1978-79.
,, M36 (c) Annual Report and statement of Accounts for 1979-80.
,, M37. Letter No. B. 868/78 dated 13-10-1978 from Deputy Labour Commissioner, Kottayam.
,, M38. Notice Forms 1.

Witnesses examined on the side of the Petitioners.

WW1. Shri P. I. Mathew

WW2. Shri Maathu

Exhibits marked on the side of the Petitioners:

Ext. W1 Notice dated 19-10-1978 displayed on the Notice-Board.
,, W2 Wage-slip.
,, W3 Notice dated 20-10-1978.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 800/83/LBR. *Dated, Trivandrum, 7th July* 1983.

The award of the Industrial Tribunal, Alleppey in respect of the dispute between the Manager (Personnel and Administration) Scooters Kerala Limited, Alleppey and their workmen represented by (1) The General Secretary, Alleppey Scooter Factory Employees Association (AITUC), Vadackal, Alleppey (2) The General Secretary, Scooters Kerala Employees Union (CITU), Vadackal, Alleppey received by Government on 30-5-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, ALLEPPEY
(Dated this the 8th day of March, 1983)

Present:

SHRI K. KANAKACHANDRAN, B.Sc., LL.B.,
INDUSTIRAL TRIBUNAL

INDUSTRIAL DISPUTE No. 24/79

Between

THE MANAGER
(Personnel and Administration) Scooters Kerala Limited, Alleppey.

And

THE WORKMEN
of the above concern represented by the (1) General Secretary, Alleppey Scooter Factory Employees Association (AITUC), Vadackal, Alleppey (2) The General Secretary, Scooters Kerala Employees Union (CITU), Vadackal, Alleppey

Representations:—

Sri K. P. M. Sheriff,
Advocate, Manzoor Mahal,
Alleppey-I. For *Management.*

Sri T. D. Kavirajan, Advocate,
Alleppey. For *Union.*

AWARD

In this dispute the only issue referred for adjudication is "the status and pay of M/s. K. P. Mathew and Narayana Panicker in Painting Section" of management company. The workers whose cases were referred for adjudication were appointed in the management company as skilled workers on 13-2-1978. They belong to Union No. 1. Their appointments in the Scooters Kerala Ltd., as skilled workers Grade III were on the time scale of Rs. 140-7-175-8-215-9-260.

2. One of the workmen, K. P. Mathew, is having the general education qualification of pass in 5th standard. He started work as painter in some of the private engineering concerns. He joined the services of Kerala State Engineering Technicians (workshop) Industrial Co-operative Society, Scooter Division, Trivandrum, as a Spray Painter on 12-8-1970. The above said Engineering concern was known as ENCOS and it was producing "ATALANTA" Scooters. The worker Mathew was doing spray painting in the ENCOS. When Co-operative Scooters Ltd., was liquidated and Scooters Kerala was formed, K. P. Mathew was absorbed into the painting section. He is having more than 15 years of experience as painter and in addition to that he had undergone three month's special training at Scooters India Ltd., Lucknow. Another worker Sri C. Narayana Panicker began his carrer as a spray painter in the Co-operative Scooters Ltd., Alleppey. He was also an employee of the Scooters Kerala from its very inception on 13-2-1978. At the time of reference of this dispute, he was having more than 4 years of experience as a spray painter.

3. Two other painters who are members of the second union were appointed in the painting section after making recruitment through the local Employment Exchange. One T. K. Purushan was appointed as skilled worker Grade II in the scale of Rs. 160-9-205-10-255-11-310. Another worker Sadasiva Kurup was appointed as Grade III skilled worker on a time scale of Rs. 140-7-175-8-215-9-260. But he was given two increments at the time of appointment itself. These appointments were during September 1978 (No dates were given).

4. The dispute arose when preferential treatment was given to the above said two workers (belonging to the second union) viz., T. K. Purushan and P. Sadasiva Kurup.

5. In the claim statement filed by the first union, the nature of work done by the painters belong to the first union and their experience in painting are elaborately

stated. In the claim statement it is stated that there are two tpyes of spray painting viz., Stoving Enamel painting and N. C. painting (Nitro cellulose painting). In Scooters Kerala, method of Stoving Enamel painting is followed and the workers K. P. Mathew and Narayana Panicker are well experienced in the Stoving Enamel painting. These two workers were absorbed in the present section on the basis of order of the Government of Kerala which directed that these workers should be appointed in conformity with the category-wise seniority and suitability. They were put in the skilled worker Grade III after absorption in Scooters Kerala Ltd.

6. T. K. Purushan and Sadasiva Kurup did not have any experience in the stoving enamel painting at the time of their appointment as painters in the management company. Despite the fact that they had no experience in the system of Stoving Enamel painting, they were given higher grade and higher scale of pay. According to the Ist union the preferential treatment given to the two painters of the second union is discriminatory. K. P. Mathew and Narayana Panicker are also entitled for the same kind of treatment in view of the fact that they are more experienced in stoving enamel painting and are having more service in the management company. The Union No. 2 did not file any statement before this Court and they were only the toeing line of the management.

7. In the written statement filed by the Management the main contention raised is that it is their prerogative to which category fitment should be given to the workers and what pay should be given for each worker. The management made the two appointments after calling names from the local Employment Exchange and this course was resorted on account of lack of experienced hands in the trade of painting. The higher status and higher scale of pay were given to two workmen viz., Purushan and Sadasiva Kurup only because of their higher qualifications and experience comparing with the inferior qualifications of K. P. Mathew and Narayana Panicker. According to the management, appointments of two Painters in the category of skilled worker Grade II and III were after assessing the merits of the respective candidates. Sri Sadasiva Kurup was given the weightage of two increments considering his long service of 20 years in the Indian Army in the same trade. Both T. K. Purushan and Sadasiva Kurup were originally recruited in the Indian Army as Painters and Decoraters. They had to undergo periodical training and tests for gradation which later equipped them with the painting work of sophisticated and other types of equipments. Both of them are having higher Military Education Certificate also.

8. From the rival contentions, the only issue to be resolved is whether Purushan and Sadasiva Kurup are having superior qualifications for getting higher status and higher scale of pay comparing the qualification and experience of Mathew and Narayana Panicker.

9. It has come out in evidence that the only method of painting now being adopted in the management company is the Stoving Enamel painting. The workers belonging to the first union were working in the painting section from the very

staring of Scooters Kerala. But Purushan and Sadasiva Kurup were appointed subsequently in the same section after making selection through the Employment Exchange. They are also doing the same work viz., stoving enamel Painting.

10. I will have to examine whether Purushan and Sadasiva Kurup are having better experience and higher qualifications for their entitlement for higher salary and status. Purushan was designated as Grade II skilled worker with starting salary of Rs. 160-310. Sadasiva Kurup, although he was put in the category of skilled worker Grade III, he was given two additional increments at the starting of service itself so as to have almost equal pay with that of Purushan who was designated as Grade II skilled worker. The complaint of the first union is that for this kind of preferential treatment, these later appointees are not possessing any additional qualification and better experience in comparisen with the qualification and experience of Mathew and Narayana Panicker. According to the first union, these two workers viz., Mathew and Narayana Panicker are more experienced and more well versed in the art of stoving enamel Painting and at no occasion the management found them unsuitable.

11. Although several documents were marked by the management in support of their conditions. I need only to rely on two documents produced by the management at the request of the union No. 1. Those documents are Ext. W8 and Ext. W9.

12. Ext. W8 is a memo dated 4-1-1979 given by the Managing Director of the employer company to T. K. Purushan. I shall extract below the contend of the memo. It reads as follows:—

> Your performance as a Painter (S. W. II) is not satisfactory. You have not so far come up to the standard required for the work for which you have been recruited. Your probation is therefore extended for a further period of two months. If you do not come up to the standard within this extended period, serious action including termination may have to be taken against you.
>
> You are advised to improve your working and strive to achieve the required standards.
>
> (Sd.)
> *Managing Director.*

13. An identical memo was given on the same date to the other Painter P. Sadasiva Kurup also. The management's case, as stated in the written statement, is that since the existing painters were not found to be suitable, new painters had to be appointed through Employment Exchange. In the interview conducted by the Recruitment Board of the management company, T. K. Purushan was assigned the first rank and second rank was assigned to Sadasiva Kurup. They were appointed in Grade II and Grade III respectively on the assumption that they will match with the Job requirement. And on that assumption they were given higher scale of pay. In

the case of Sadasiva Kurup two additional increments were also granted. The performance of two persons after entering into service was found to be unsatisfactory and hence Ext. W8 and W9 memos were issued by the Managing Director. The memo specifically states that these two workmen had not come up to the standard required for the work for which they were recruited. Only to improve the performance their period of probation was extended.

14. With the documentary evidence adduced through Ext. W8 and W9, it would be better to go through the evidence tendered by the Personnel Manager of the management company also. MW1 is the Personnel Manager and he had admitted in the cross-examination that before the appointment of Purushan and Sadasiva Kurup no unsuitable hands were working in the painting section. Periodical assessments were made in respect of works performance of Mathew and Narayana Panicker. He had also admitted that the paintings done in Scooters Kerala were known as of better quality and this opinion was in existence even prior to the appointments of Purushan and Sadasiva Kurup. Before the appointment of Purushan and Sadasiva Kurup, the painting works were done by Mathew and Narayana Panicker and at no occasion they were found to be unsuitable to do the job of stoving enamel painting.

15. The management has stated that the two workers Mathew and Narayana Panicker were absorbed in the Scooters Kerala only because of the directive contained in the Government Order which was issued at the time of taking over the Co-operative Scooters. It is stated in the order that employment to the existing employees may be given subject to their suitability. MW1 has categorically stated that nobody was absorbed in the company as against the directive contained in the Government Order. He has also admitted that at no occasion memos like Ext. W8 and Ext. W9 were issued to Mathew and Narayana Panicker. There were no adverse remarks with regard to their performance in the painting.

16. From the evidence adduced in this case there is no difficulty for me to arrive at a conclusion that the performance of Purushan and Sadasiva Kurup in stoving enamel painting was at no time superior to that of Mathew and Narayana Kurup. May be, they are having experience in the Military service as Painters. As Painters both Mathew and Narayana Kurup are also having experience. In the stoving enamel painting, evidently they are more proficient than the newly recruited Ex-military persons. If less competent person can given higher scale of pay and superior designation there is no justification for denying the same to the more experienced painters who had spot less service as painters. They are also entitled for parity in wages and status and the discremination shown to the workmen concerned in the dispute is not all justifiable.

17. My finding that Purushan and Sadasiva Kurup are in no way better experienced compared to the workmen concerned in the dispute is not and expression for bringing their salary also to the scale of pay of Mathew and Narayana Panicker. The anomaly created by the management in the pay structure can be rectified by giving parity in the matter of pay scales and status to Mathew and Narayana Panicker also. This

award is passed with a declaration that both workmen concerned in the dispute are entitled for parity in wages and status from the date on which Purushan and Sadasiva Kurup were appointed. Either all of them must be put in the category of skilled worker Grade II with the scale of pay of Rs. 160-9-205-10-225-11-310 or be put in the category of skilled worker Grade III with all the monitory benefits which were enjoyed by Sadasiva Kurup from the date of his appointment. I will make it clear that although status in respect of four painters will be equal, the workmen concerned in the dispute will be treated as seniors in service for all purposes. The workmen concerned in the dispute are entitled for arrears of wages also on account of their equation of status and scale of pay with Purushan and Sadasiva Kurup. The award is passed accordingly.

K. KANAKACHANDRAN,
Industrial Tribunal.

APPENDIX

Witnesses examined on the side of the Management:

MW1. P. M. Sreedharan, Personal Manager, M/s. Scooters Kerala.
MW2. T. K. Purushan.
MW3. Sadasiva Kurup.

Witnesses examined on the side of the workmen:

WW1. K. P. Mathew
WW2. V. Balachandran

Exhibits marked on the side of the Management:

Ext. M1. Letter No. BC/03/05/415 dated 8-4-1978 addressed to the Employment Officer.
" M2. Interview Rating Form dated 27-6-1978.
" M3. True copy of extract from the Admission Register of Sri T. K. Purushan.
" M4. True copy of Certificate of service.
" M5. Letter No. BC. 02-01-1879 dated 17-8-1978 addressed to the District Labour Officer, Alleppey.
" M6. Letter No. BC-02-C1-3093 addressed to the President, Alleppey Scooter Factory Employees Association.
" M7. Letter No. BC-02-01-4450 dated 7-5-1979.
" M8. Discharge certificate.
" M9. Certificate of experience issued to T. K. Purushan.
" M10. Trade proficiency certificate of Ex-servicemen issued to T. K. Purushan.
" M11. Discharge certificate.
" M11. (a) Copy of page No. 13 of the Discharge certificate.

Exhibits marked on the side of the workmen:

Ext. W1. Certificate of experience dated 20-12-1968 issued to K. P. Mathew.
,, W2. Experience certificate issued to K. P. Mathew.
,, W3. Letter dated 2-7-1969, addressed to K. P. Mathew.
,, W4. Letter dated 11-8-1970 addressed to K. P. Mathew.
,, W5. Letter dated 12-8-1970.
,, W6. Certificate dated 24-3-1977 issued to K. P. Mathew.
,, W7. Certificate dated 28-2-1976 issued to Mr. K. P. Mathew by M/s. Scooters Kerala
,, W8. Memo dated 4-1-1979 addressed to T. K. Purushan.
,, W9. Memo dated 4-1-1979 addressed to K. Sadasiva Kurup.

Kerala Gazette No. 45 dated 15th November 1983

PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 1252/83/LBR. *Dated, Trivandrum, 31st October 1983.*

The award of the Industrial Tribunal, Alleppey in respect of the dispute between the Management of the Tea Trade Association of Cochin, Cochin-3 and their workmen represented by the General Secretary, The Cochin Commercial Employees' Association, 1/1292, Amaravathy Road, Cochin-1 received by Government on 22-10-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey

(Dated this the 1st day of September, 1983)

Present :

SHRI K. KANAKACHANDRAN
Industrial Tribunal

In

INDUSTRIAL DISPUTE No. 40 OF 1982

Between

The Tea Trade Association of Cochin, Cochin-3.

And

The Workmen of the above concern represented by the General Secretary, The Cochin Commercial Employees' Association, 1/1292, Amaravathy Road, Cochin-1.

Representations:—

M/s Kamath & Kamath, Advocates, Cochin. .. For *Management.*

M/s M. Ramachandran & K. R. B. Kaimal. .. For *Association.*

GA. 166/V.

AWARD

On behalf of the staff members employed in the Management establishment, the Cochin Commercial Employees Association submitted a charter of demands on 25-10-1979. This charter of demands contains enhancements in the Scales of pay, Variable Dearness Allowance, Willingdon Island Allowance, Washing Allowance, and Meals Bata. On the question of fitment and leave facilities also, the union wanted certain changes from the existing facilities. Although negotiations were held, but those ended in failure. Hence this dispute was referred for adjudication by G. O. (Rt)No. 529/81 LBR dated 7-4-1981 of the Government of Kerala.

In the statements filed on behalf of the workmen and the management, no mention is made about the existing scale of pay applicable to the workmen concerned in this dispute. In the claim statement the union highlights only the rates of pay like the workmen want. It is silent about the existing scale of pay. On the other hand, the statement filed by the Management contains only the details regarding the offer they made during negotiation in the matter of basic pay and other allowances,

Before going to the respective claims made by both parties it would be better to go through the nature of establishment and its functioning. The Management establishment is known as Tea Trade Association of Cochin. It is an unoegistered Association of persons engaged in the business of Tea viz Tea buyers, sellers and brokers. According to the management it is a non-profit making association formed with the object of promoting Tea Industry in South India. The income of the association is mainly from the subscription from the members and registration fee from non members, buyers and sellers. It does not have large membership. Its membership confines to buyers, sellers and brokers of Tea in and around Cochin. It also does not render any subsidiary service for deriving any additional source of income. It has no capital or other resources. This establishment had flourishing business at the time when Tea Industry was in its prosperity. Because of the various factors, its business in the Cochin area marked a show of decline. At Coimbatore, another auction centre was opened wherein most of the members of the management association sought memberships. They practically shifted their trade to Coimbatore. The fate of Cochin Tea auction centre is very delicately balanced now because the international price of the Tea is leading to a steady fall. Many Tea Estates are on the verge of closure and that may adversely affect the overall business of the Management Association also.

After the submission of charter of demands the management started negotiations with the union and in fact they suggested certain improvements also in the existing wage scale taking in to consideration their ability to pay. It is also not in dispute that the Management establishment is a very small one consisting of a Steno Typist cum- Clerk and two Peons. It has also got a part- time Sweeper. The full time employees have wage structures consisting of Basic salary, Fixed D. A., and Variable D. A. and Special Allowance called Island Allowance. One out of two Peons, is still given a consolidated Salary. An ex-gratia payment equal to one month's wage is also paid to the employees.

The demand of the union as per the claim statement is that their wages and other allowances should be revised in accordance with the wage structure prevailing in the comparable concerns in and around Cochin. According to the Union, one of the comparable concerns is the Cochin Chamber of Commerce and if a comparison is made it can be seen that there is substantial difference in the wage pattern of the Management establishment and that of Cochin Chamber of Commerce. Union had produced the memorandum of settlements effected in some of the establishments in Cochin. Ext. W1 is the memorandum of settlement between Forbes Ewart & Figgis Private Limited, Cochin and the workmen therein. Ext. W2 is the memorandum of settlement between the management of Indian Chamber of Commerce, Cochin and the workmen therein. Ext. W3 is the memorandum of settlement signed in M/s. A. V. Thomas & Co., Ext. W5 is a memorandum of settlement signed by the managements of 6 estates with their workmen in I. D. 2/1977 pending before this Tribunal. The attempt of the union is that those management concerns who are parties to the above settlements are similar in nature to that of the management in this dispute and by applying the principles of Industry-cum-Region, a substantial increase can be given to the workmen concerned in this dispute also. In this context it would be better to examine whether Ext. W1 to W5 have any relevancy for determining the issues referred for adjudication in this dispute. There is no evidence before me to show that the managements who are parties to Ext. W1, W3 and W5 settlements are comparable concerns with the management in this dispute. They are all big companies employing substantial number of workmen. Their nature of business, turnover per annum and employment strength have no bearings to the state of affairs existing in the management which is concerned in the present dispute. Therefore no reliance can be given to the wage patterns adopted as per the momorandum of settlement Ext.W1, W3 and W5. While taking into consideration the nature of business and employment strength of Indian Chamber of Commerce, Cochin, it can be seen that even this establishment cannot be considered as a comparable concern with the Tea Trade Association. The Management has attempted to adduce evidence to show that the Indian Chamber of Commerce is not at all a comparable concern and the wage structure therein is comparatively lower than that of the Management establishment. According to them even in those establishments covered by Ext. W1, W2 and W3 settlements, the basic pay scale prevailing there are far less than that of the management establishment. In the Chamber of Commerce and Industry, Cochin, a Grade II Clerk is put in the salary scale of Pay of Rs. 160-15-235-20-335-25-460-30-610. But a Grade I Clerk is having only the scale of pay of Rs. 90-375. In order to get promotion as Grade II Clerk from Grade I Clerk, a person should have at least 25 years of service. In the case of employees covered by Ext. W1 settlement, a Grade I Clerk in Forbes Ewart & Figgis Private Ltd., Cochin, will be getting basic pay only in the scale of Rs. 90-524. So

like a Crade II Clerk therein is put in the scale of pay of Rs. 130-915. As already stated there is no materials before me giving an idea regarding the existing scales of pay prevailing in the Management association. Moreover the pay scales shown in various settlements cannot be made applicable directly in the case of the workmen concerned in this dispute obviously on account of the fact that these establishments are not at all comparable concerns. Therefore an independent examination of the whole matter is necessitated for arriving at proper conclusion in relation to the issue of wage revision in this dispute.

In the claim statement it is contended by the union that after the submission of charter of demands, negotiations were held and the management had conceded most of the demands and the only difference of opinion was in the rates to be fixed in the matter of variable D. A. The union has not stated in the claim statement to what extent the management was agreeable for their demands. On the other hand management had detailed in their statement the enhancements they offered in the pay and allowances and this was not disputed by the union. With these background I shall examine the issue on the question of wages and other allowances.

(1) *Basic Pay Scales*: In the charter of demands, the union pleaded for the introduction of the following scale of pay to the workmen concerned in the dispute with effect from 1-1-1979. The scales of pay demanded are as follows :—

A.	Clerks/Typists/ Stenographers.	Rs.	250-15-325-20-425-25-550-30-700-35-875-40-1075. (30 yrs.)
B.	Peons/Attenders.	Rs.	175-8-215-10-265-12-325-14-395-16-475-18-565. (30 yrs.)
C.	Sweepers.	Rs.	125-6-155-8-195-10-245-12-305-14-375-16-455. (30 yrs.)

On the question of enhancement in the scales of pay the Management's offer as per their statement filed before this Court is in the following manner :—

(i)	Stenographer-cum-Typist/Clerk	Rs.	100-10-200-12½-300-15-375-20-415.
(ii)	Peons	Rs.	60-5-110-7½-180-10-230-12½-255.

It is also submitted that the fixed D. A. now being given to them at the rate of Rs. 80 per month can be merged with the basic pay with effect from 30-1-1982 and then the basic pay can be fixed at the next higher step in the grades proposed above. The management is not prepared to give a separate scale of pay to the Sweeper. According to them the present Sweeper is only a part-time Sweeper and she is not under obligation to be in the office during the working hours and in fact she needs to

come only 5 days in a week. WW1 who is the Steno-Typist in the management establishment has sworn to before this court that at present Sweeperis being given Rs. 20 per week. One of the Peons is given only a consolidate pay of Rs.350p. m. and so far no Scale of pay has been fixed in the case of that Peon Mr. M.X. George. WW1 has not stated anything about the present pay scale aplicable to her as also to the other Peon. She has only said before this Court that as on 1-1-1983, she was getting a total monthly salary of Rs.879 and the other Peon was getting Rs. 831. This sum is inclusive of fixed D. A. and variable D.A. From the data given by WW1, no conclusion is possible with regard to the existing wage scales of the Steno-Typist and Peon. In this context it would be safer for me to rely on the offer made by the management in the matter of wage scale. The Union itself has stated in the claim statement that except on the question of variable D.A., settlement was there between them and the management. The Union does not put up a case now that the offer made by their employer during negotiation was more than at the rates what they have stated in the statement. Therefore I accept the offer made by the management as the basis for fixation of pay in so far as the wage scales of the Clerk and the Peons and their pay shall be fixed accordingly. The scale of pay offered by the management to the category of Peons should be granted to the other Peon who is now said to be given only a consolidate pay of Rs. 350 per month. No reason is stated by the management for the differential treatment. In so far as the Sweeper is concerned it would be only fair that she should be given a consolidate pay per month while considering her long association with the management establishment. The union's demand is that the Sweeper should be put in the scale of pay of Rs. 125-6-155-8-195-10-245-12-305-14 375-16-455. According to me this demand is not at all justified. At present the Sweeper is getting the weekly wages of Rs 20. That is very inadequate. Therefore I pass an award directing the management to pay her a consolidate sum of Rs.200 per month with effect from 1-1-1983. The revised scales of pay in the case of others, would be effective from 1-1-1982.

(2) *Fitment*- The union's case is that all the existing employees including the Sweeper shall be fited into the pay scales demanded by them as on 1-1-1979 on a point to point basis granting one increment for each year of service. On this demand, the management stand is that since they are prepared to fix up new scales of pay without deduction in the present basic wages, there is no need for point to point adjustment. They are also prepared to implement the revised scale from 31-1-1982.

The unions demand for one increment for each year of service is not at all justified in veiw of the fact that the manangement association is not at all financially sound now. Moreover it is suffering heavy losses also during the current year and previous year. Anyhow considering the entire aspect of the matter I direct the management to pay two advance increments at the stage on which the employees were on the date 1-1-1979 One Peon, who was getting only a consolidated pay on the above date will be entitled to get Rs. 15 p.m. from 1-1-1979 in the form of advance increment.

(3) *Vasiable Dearness Allowance* :—At present the permanent employees of the management establishment are getting Variable D.A. at the rate of 35 Ps. per point above 400 points of the Ernakulam Cost of Living Index (Old series). The Union's claim is that they shall be paid Variable D.A. at the rate of 50 Ps. per point over 400 points of Ernakulam Cost of living Index (Old series). WWI has stated that the Variable D.A. at the rate of 35 Ps. per point was given to them in the year 1976 and then after no enhancement was given although in several other establishments increase was given in the Variable D.A. In the Indian Chamber of Commerce, Cocbin, the employees therein are paid Variable D.A. at the rate of 40 Ps. per point above 400 points of the Ernakulam Cost of Living Index. Formerly it was 35 s.P per point to the employees of Indian Chamber of Commerce, Cochin. It can be seen from Ext. W5 memorandum of settlement that in the case of employees A.V. Thomas & Co., and other companies engaged in Rubber Industry, the Variable Dearness Allowance is given at the rate of 40 Ps. per point over 400 points of the Cost of Living Index to the employees working at Alleppey, Ernakulam and Trivandrum. M/s A.V. Thomas & Co., and other similar companies are not at all comparable establishments with the management estabIishement In magnitude of the business and in the nature of work even the Indian Chamber of Commerce, Cochin cannot be treated on par with the manitgement association. But it is a fact that the employees of these establishments are working at Wellingdon Island and Cost of Living is almost identieal. WWI has stated that till 1978 the employees of management association were given periodical revisions in the matter of pay and allowances as in the manner revisions were effected in the Chamber of Commerce, Cochin and tha practice was stopped after 1978.

The management's contention is that there is no need for any enhancement in Variable D.A. because the rate of Variable D.A. now being given is fair and therefore no further increase is required. The union's demand is for the increase at the rate of 50 Ps. per point over and above 400 points of Ernakulam Cost of Living Index with effect from 1-1-1979. No where in Willingdon Island Variable D.A. is given at this rate and this I could see from the documents produced by the union. From these documents it can be seen that in no establishment Variable D.A. is given at higher rate than 40 Ps. per point over 400 points. In view of the above I direct the management to pay the employees of the management establishment Variable D.A. at the rate of 40 Ps. perpoint over 400 points of Eranakulam Cost of Living Index with effect from 1-1-1982.

(4) *Willingdon Island Allowance* :—On this allowance tbe union demand is tbat employees shall be given Island Allowance at the rate of Rs. 5c from 1-1-1979. This allowance is being given to the employees considering the fact that the employees cannot reside at the Wellingdon Island. Now they are being paid at the rate of Rs. 20 per month as Willingdon Island Allowance. It can be seen from Ext. W4 that at Forbes Ewart & Figgis, Cochin, now Island Allowance is being given at the rate of

Rs. 25 per month to all clerical and subordinate staff. Ext. W5 shows that the employees of A. V. Thomas & Co., and other group of companies at Cochin, are getting Rs.30 per month as Island Allowance. Even when big establishments are giving only Rs. 30 or 25 per month as Island Allowance, there is not justification for demanding Rs. 50 per month by the employees who are working in a smaller establishment like the management establishment. Therefore, according to me, the present rate of Island Allowance cannot be considered as insufficient. And therefore no interference is called for on the rate of Wellingdon Island Allowance now prevailing.

(5) *Washing Allowance* :—The management has stated that the Peons and Attenders are being given Rs. 3 per month as Washing Allowance now itself and therefore no revision is required in the matter of Washing Allowance. But the Union's claim is for Rs.20 per month in the case of those employees who are wearing uniforms. There is no evidence before me to show that the Peons are using uniforms while they are on their duty. If they are regularly using uniforms while on duty, they shall be given a uniform allowance at the rate of Rs.15 per month. For this enhancement, they will be entitled only if they are using uniforms during duty hours. This benefits will have no retrospective effect.

(6) *Meals Bata*:—In the charter of demand it is stated that the employees shall be paid Meals Bata at the rate of Rs. 5. Presently they are given Meals Bata at the rate of Rs. 1. 75. If the intention of the management in giving Meals Bata is to subsidise the meals expenses, it would be only fair that a slight increase is given in the matter of meals allowance. Of course the entitlement for Meals Bata is not at all based on any rightful claim. Since the management is paying them Meals Bata and the intention itself is to compensate the meals expenses, it is only fair that they shall be given Rs. 3 per day as Meals Bata.

(7) *Leave Facilities*:—At present, the employees of the management establishment are enjoying 12 days casual leave, 12 days sick leave and Privilege leave at the rate of 12 days per annum to those who are having up to 10 years of service. Those who are having the service between 10 and 20 years are entitled for 18 days privilege leave. But those who are having more than 20 years of service are entitled for 24 days of privilege leave per annum. But the union's demand is that sick leave shall be enhanced from the present rate of 12 days per annum to 45 days per annum with the right of accumulation for 3 years. In so far as the privilege leave is concerned the union demand is that employees shall be given 30 days privilege leave per annum with the right of accumulation for two years. In none of the documents produced by the union, there is any clear indication regarding the existing leave facilities prevailing in other establishments at Cochin. There is no material before me to conclude that the existing leave facilities to the employees concerned in this dispute are unfair and irrational. Therefore I hold that the present leave facilities granted by the management require no change.

(8) *Encashment of unavailed leave*:—At present, no option is given to the employees to encash the unaviled leave. The management's contention is that they are not financially sound to bear the additional burden on this count. To that extent although the management is justified in their contention, that will not be a proper thing to deny the employees such facility. The facility for encashing unavailed leave is normally intended to encourage the employees to do work instead of keeping at home enjoying leave facility unnecessarily. It is true that the management's financial position is now in the red. Financial difficulty shall not be a permanent affair. The management will have to find out their own means to augment their resources. The facility to encash unavailed leave should be introduced in a phased manner. Towards that goal, I direct the management to give their employees facility to encash leave for 15 days in an year from 1984 onwards.

(9) *Holidays and other facilities*:—In the matter of national and festival holidays, salary advance, Medical aid amenities, retirement age and gratuity the existing terms and conditions will continue. No materials are now before me showing the need for altering the terms and conditions in relation to the above matters. Therefore award is passed holding that in the matter of national and festival holidays, salary advance, Medical aid amentities, retirement age and gratuity the present condition will continue for three more years from the date of coming into force of this award.

The award is passed accordingly.

K. KANAKACHANDRAN,
Industrial Tribunal.

Appendix

Witness examined on the side of the workmen:

WW1. Smt. Thankamony, N.

Exhibits marked on the side of the workmen:

Ext. W1. True copy of Memorandum of settlement dated 9-6-1982.

Ext. W2. True copy of Memorandum of settlement dated 2-5-1980.
,, W3. True copy of Memorandum of settlement dated 19-4-1982.
,, W4. True copy of Memorandum of settlement dated 11-9-1977.
,, W5. Joint memorandum of settlement dated 18-2-1978.

Witness examined on the side of the Management:

MW1. Shri Rajan, M. V.

Exhibits marked on the side of the Management:

Ext. M1. Thirty first Appeal Report of Tea Trade Association of Cochin.
,, M2. Thirty second Annual Report of the Tea Trade Association of Cochin.
,, M3. Letter No. ECC-195/9/82-83 dated 24-11-1982 addressed to M/s The T. T. Association of Cochin.
,, M4. Memorandum of settlement dated 3-10-1977.
,, M5. Memorandum of settlement dated 21-10-1981.

Kerala Gazette No. 45 dated 15th November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 993/83/LBR. *Dated, Trivandrum, 1st September 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between the Kothamangalam Service Co-operative Bank Limited No. 583, Kothamangalam, represented by its President and the workman of the above concern Shri C.K.Eldo, Chelamikodan House, Malayinkeezhu, Nadukani, P. O., Kothamangalam received by Government on 12-8-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Monday, the 8th day of August 1983

Present :

Shri N. SUKUMARAN, B. SC., B. L.

Presiding Officer

INDUSTRIAL DISPUTE No. 16 OF 1980

Between

The Kothamangalam Serivce Co-operative Bank Limited No.583, Kothamangalam, represented by its President

And

The workman of the above concern Shri C.K. Eldo, Chelambikodan House, Malayinkeezhu, Nadukani P.O., Kothamangalm.

Representations :

M/s V. M.Kurian, K.K. Gangadharan & A.V.Thomas, Advocates, Ernakulam. .. For *Management*.

M/s M.Rama Chandran & K.R.B.Kaimal, Advocates, Cochin-17. .. For *Workman*.

G.A. 118/V.

AWARD

Dimissal of Shri G.K. Eldo is the issue referred for adjudication by Government as per G.O.(Rt.) No. 223/80/LBR dated 25-2-1980.

2. Shri Eldo was the Secretary of the Kothamangalam Service Co-operative Bank Limited No. 583 (the Bank for short) when he was dismissed as per Ext. M18 dated 9-3-1973 with retrosspective effect from 20-11-1972. Before that he was placed under suspension pending enquiry into certain allegations against him. Initially Ext. M10 charge dated 16-11-1972 containing six items of misconduct was served by the Bank on Shri Eldo to which he submitted Ext. M11 explanation. Thereafter four additional items of misconduct were attributed to Shri Eldo as per Ext. M12 charge dated 12-12-1972. The explanation to the additional charge is Ext. M13. The explanations were not acceptable to the Bank and a Sub Committee of the Director Board authorised to conduct a domestic enquiry into the charges found him guilty and it was on the basis of those findings that Ext. M18 dismissal followed. Shri Eldo challenged the correctness of the dismissal by way of an arbitration through the concerned officer of the Co-operative Department. In appeal the Co-operative Tribunal held that the proper course to be adopted is to raise an industrial dispute. That is how it finally resulted in this reference on failure of conciliation sevaral years after the date of dismissal.

3. The Bank had contended that the dismissal was on the basis of a proper domestic enquiry. But it was later conceded before me that the domestic enpuiry was not proper and therefore it is prepared to lead evidence before Court. Evidence was also adduced on either side and therefore I am answering this reference by this award without a preliminary order.

4. The charges against Shri Eldo in Ext. M10 were the following:—

i A sum of Rs. 500 and interest repaid towards a loan by Shri Chittuparamban Joseph Joseph (MW2) on 29-6-1971 was not credited in the Bank in favour of the Party and thereby caused loss to the party and the Bank.

ii. Loans outstanding due from the employees of the Bank were not realised.

iii. Repeated decisions of the naging Committee to initiate proceedings for realisation outstanding loans were not implemented.

iv Amounts due to the Forest Department as rent for the land allotted to the Bank were not remitted in time even though the amounts were collected in time from Shri Karakkombil Varghese Joseph, a member of the Bank, to whom the land was allotted for cultivation.

v. A property which was pledged by Shri Eldo to the Bank as security was allentated by him without sanction from the Bank and Shri Eldo purchased another property which was offered as security for a loan to the Bank without taking action for realisation of the money that was due to the Bank.

vi. Prompt steps were not initiated for realisation of arrears from subscribers of chitties of which the Bank was the Foreman. The accounts of the chitties were also not properly drawn up. Amounts collected by way of chitty subscriptions from the subscribers were not credited in time. Various irregularities including corrections were made in the accounts concerning the chitties.

5. The additional charges as per Ext. M12 are the following :—

i. Textiles worth Rs. 205.36 alone were handed over charge when Shri Eldo was suspended on 29-11-1972 as against the stock balance as per registers of Rs. 1099.17.

ii. Records were created to show that the textiles were auctioned on 29-6-1972 when as a matter of fact there was no sanction for any auction. The Bank had suffered a loss of Rs. 972.72 in this transaction.

iii. The actual stock of textiles that should have been presented for verification on 30-6-1972 was not available.

iv. Remittance made by Smt. S. Saradammal towards chitty subscriptions by way of cheques was not given credit in time and the amount was misappropriated.

6. In the charter of demands Shri Eldo had claimed reinstatement with all benefits alleging that he was victimised at the instance of the President of the Bank on account of some personal ill-will.

7. In the initial written statement the Management pleaded that Shri Eldo was found guilty of the above charges in a properly conducted domestic enquiry and therefore the dismissal is sustainable. Shri Eldo in his statement filed in answer pleading innocence of the charges repeats the complaint that he was an innocent victim deserving reinstatement with all benefits. An additional written statement is also filed by the Management reiterating that Sri Eldo was not victimised at all and that he was awarded a punishment that he really deserves.

8. Both sides have adduced evidence before this Court afresh and it consists of the testimony of four witnesses for the Management and one for the workman. The workman himself is the solitary witness on his side. Exhibits available are M1 to M47 and W1 to W5.

9. Victimisation is attributed by the workman to the Bank. The complaint is that the irregularities relate to periods prior to the date on which the Director Board which initiated action took charge and the new Director Board, especially its President examined as MW4 before me had a special axe to grind against Shri Eldo. What is stated in the charter

of demands is that Shri Eldo's refusal to act according to the direction of the new President in certain money matters of the Bank in a manner favourable to the President personally gave room for the President to adopt a hostile attitude towards him.' But in the evidence Shri Eldo states as WWI that the reason for the enmity is something different. What he states before me is that MW4's rival candidate at the election was set up and backed by his (Eldo's) brother and the refusal of Shri Eldo to persuade that rival candidate to withdraw from the contest is the root cause for the animosity. This shows that Shri Eldo has no consistent case regarding the motive attributed to MW4 for the action. Even otherwise the question as to whether there was victimisation or not cannot be decided as an independent issue. If as a matter of fact Shri Eldo was innocent of all the charges then of course it can straightaway be inferred that there was some motive to make him a scapegoat. If on the other hand he was really guilty of the charges the illwill if at all any will cease to have importance. So what we have to find is as to whether Shri Eldo is really guilty or net. For this matter the charges are to be considered on the basis of the evidence available. For that purpose a regrouping of some of the charges that involve common aspects is necessary. I shall consider the charges accordingly.

10. Item No. 1 of the charge is not in any way connected with the rest of them. So that can be independently considered. It relates to a remittances of Rs. 500 and interest said to have been made by MW2 on 29-6-1971. MW2 had availed of an O. L. loan of Rs. 500 on 17-5-1981 by executing Ext. M4 security bond along with two sureties. When that loan was outstanding he was sanctioned another S. T. loan of Rs. 750. He executed Ext. M5 bond as security for that loan on 29-6-1971. To qualify himself for the additional loan he had to acquire three more shares in the Society for which he made necessary payment as against Ext. M6 receipt. What is spoken to by MW2 is that he did not receive the full amount of Rs. 750 as per Ext. M5 and what was paid over to him was only Rs. 61.45 after adjusting the loan amount as per Ext. M4, interest thereon and certain liabilities of his sureties. His case is that a net amount of Rs. 61.45 alone was paid over to him and Rs. 500 as the principal of Ext. M4 loan and Rs. 6.25 as interest thereon should have been credited in the relevant accounts as repayment made by him. Ext. M44 cash book contains Ext. M44 (a) (page 72 onwards) relating to the transactions on 29-6-1971. No credit is given for payments made by MW2 on that day in it. Ext. M21 is the loan ledger for the relevant period. The page 129 separately marked as Ext. M21 (a) relates to MW2. That shows that he was paid a cash amount of Rs. 750 on 29-6-1971. The complaint that he was not actually paid that amount was raised by him as per Ext. M7 complaint dated 10-10-1972, i. e., soon before Ext. M10 charge was issued. What was stated in Ext. M7 is that he was again asked to repay Ext. M4 loan and interest thereon when as a matter of fact it had been closed by adjustment when Ext. M5 loan had

been sanctioned and Ext. M5 executed. His evidence is that the details of the adjustment are written on the reverse of Ext. M6 receipt by Clerk Shri Baby as instructed by Shri Eldo. It is seen from the memo of accounts written on the reverse side of Ext. M6 that some adjustment had been made including the principal of Rs 500 and the interest thereon as per the earlier loan and a balance after some other deductions was struck at Rs. 61.41. It is not the contention of Shri Eldo that MW1 had been paid the entire amount as per Ext. M5 and that no adjustment was made towards the earlier loan. His defence in Ext. M11 explanation is that Clerk Shri Baby who was the Accountant was in complete charts of the loan transactions and Shri Baby was responsible for the defects and that actually MW2 and Baby had admitted these facts in the statements written and handed over to him. He had stated further that the statements of these persons had already been submitted earlier before the Bank to prove his innocence. Shri Eldo had called upon the other side by a petition for the production of those two statements before this Court. But the Bank denies having received any such statements. But the allegation regarding the submission of such statements contained in Ext. M11 was not anywhere denied by the Bank till they filed their reply in answer to the requisition for production of those two documents. MW4 the President before whom Ext. M11 explanation was submitted had no answer as to why the claims regarding the submission of those statements contained in Ext. M11 were not promptly denied. Shri Baby is no more. It is common case that he was also proceeded against in connection with the irregularity which is the subject matter of item No. 1 of Ext. M10 charge. It is admitted before me that he had committed suicide after issuing Ext. M45 postal inland letter to the Bank. Ext. M45 is something like a dying declaration or a suicide note issued soon after his dismissal. In it he had confessed his guilt on certain items. While doing so he has stated that he has not appropriated the money in connection with the closure of a loan and that it was closed as was directed by the Secretary. He did not admit that he was responsible for the irregularity concerning the closure of Ext M4 loan. From these circumstances the learned counsel appearing on behalf of the Bank argues that Shri Baby cannot be held responsible for the irregularity covered by this item of the charge.

11. Now it is common case that there was an irregularity concerning the closure of Ext. M4 loan. Admittedly there is no cash payments as per the accounts or the other connected registers concerning that closure. MW2 has no case that he paid the cash. His case as already mentioned is that it was adjusted as shown on the reverse side of Ext. M6. Shri Eldo's defence is that he was not a party to the actual closure and it was not the practice for him to deal with cash or the loan transactions directly as according to him Shri Baby was in full charge of the paper work in connection with loans and the Cashier was handling the cash as per the records drawn up by Shri Baby who was the Accountant. Reliance is placed on resolution No. 495 contained at pages 95 and 96 of Ext. M32

minutes where specific duties were assigned to all the four clerks who were then employed under the Bank. Shri Baby is designated there as the Accountant. He was put in the charge of all matters concerning the loan transactions. Clerk Shri B D. Mathew was designated as the Cashier and he was put in charge of actual cash transactions. He was directed to hand over the cash balance every day as per the books to the Secretary. Shri Mathew is still an employee of the Bank and the evidence is that he is on leave having some job abroad. The Bank had various activities and the Secretary had only over all control. In the face of the resolution to which reference is made above it is clear that Shri Baby was in full charge of loan transactions for which the cash was to be handled by Shri Mathew the Cashier. The Secretary had only overall supervision of the various activities of the Bank. It is admitted by MW4 that the memo of accounts on the reverse of Ext.M6 is in the handwriting of Shri Baby. The Bank had produced Ext.M22 Attendance Register in which the page relating to 29-6-1971 is also contained. That is page 46 separately marked as Ext.M22(a). What is intended by the production and proof of Ext.M22(a) is to establish that Shri Eldo was present in the Bank on that day. That much is proved by the document. But a further inference is sought to be drawn from his presence that the adjustment of which MW2 speaks must have been done with the active participation of Shri Eldo. Even MW2 had not made any payment to Shri Eldo. Even if it is assumed that Shri Eldo had permitted such adjustment it does not automatically follow that the cash surplus that resulted out of the non-accounting was available with Shri Eldo as cash was actually with the Cashier Shri Mathew. It was upto Shri Baby to prepare the proper receipts and to make the accounting accordingly. The cash balance as per the accounts alone was entrusted by the Cashier to the Secretary towards the end of every day. If there was any surplus cash them it could have been retained only by the Cashier. No doubt the Secretary could have verified the accounts in time and detected the deficiency, if any. But that does not mean that he was responsible for misappropriation of the surplus cash as is now alleged. In these state of affairs it cannot be said that Shri Eldo was responsible for misappropriation or irregularity as is mentioned in this item of the charge. So I find him not guilty of item No.1 of Ext. M10 charge.

12. The other item of misappropriation of money is covered by item No. VI of Ext. M10 where there is only a general allegation of which a specific instance is mentioned in item No. IV of Ext. M12. These two items can be clubbed together and simultaneously considered. The general allegation that there was delay in initiating steps for realisation of arrears in connection with chitty transactions is not attempted to be established. What is sought to be pursued is the allegation that payments made by Smt. S. Saradammal, a chitty subscriber, by way of money orders and cheques were not credited but misappropriated. Regarding the money order there is no specific allegation in Exts. M10 or M12. So as a matter of fact the Bank cannot attempt to lead evidence

regarding the money orders without a specific allegation in the charge. Smt. Saradammal had been examined as MW1. She was a chitty subscriber and she started her subscription when she was employed in the locality where the Bank is situated. Later she was transferred to a distant place from where according to her evidence it was her practice to remit chitty subscriptions either by way of money orders or cheques addressed to the Secretary. But later she had intimation from the Bank that she was a defaulter. Then she wrote Ext. M1 complaint to MW4, the President, on 28-11-1972 stating that she is ranked as a defaulter when she had made the payments in time. She had given the details of the payments in Ext.M1. This complaint was after the issue of Ext. M10 the first charge and that is how it was included in the second one. Ext.M3 is the money order coupon under which it is seen that the Bank had accepted a sum of Rs.81 despatched by her through post. From the date shown in Ext.M3 it can be seen that the Bank received the payment on 11-3-1971. She had subscribed two tickets in two different chitties. Ext.M23 and M24 are the ledgers concerning those chitties. Page No.9 of Ext.M23 (Ext.M23c) and page No. 61 of Ext. M24 (Ext.M24-b) relate to MW1. No credit is given to her on the basis of Ext.M3 in Ext. M24. But a sum of Rs.60.75 had been given credit to in Ext. M23(c) on that day. One allegation is that Rs.20.25 as the balance as per Ext.M3 money order was not accounted anywhere. This discrepancy is not satisfactorily explained by Shri Eldo. But it cannot be treated as a misconduct in this proceedings as there is no specific charge for that item.

13. The specific charge is that payments made by MW1 by way of cheques have not been given credit to. Ext. M40 is a credit slip issued to the Bank from the District Co-operative Bank in which a cheque for Rs. 93.10 sent by MW1 is also mentioned. Ext.M2 pass book produced and proved by MW1 shows that the cheque issued by her to the Bank had been realised by way of collection. Ext.M40 includes another cheque also and the total involved is Rs.113.61. On the basis of Ext. M40 an entry is made in Ext. M30 cash book (that is Ext.M30-b) as though Rs. 113.61 was paid in cash to the District Co-operative Bank. But no corresponding credit was given to the party nor was there any credit towards the cheques received. The net result is that an amount of Rs.113.61 was shown as an item of cash paid when as a matter of fact there was no such cash transaction. The record could have been correct only if corresponding credit had been given to the parties in the cash book on the basis of the cheques. The contention of the Bank is that Shri Eldo has misappropriated this amount. But as already mentioned in connection with item No. 1 of Ext.M10 charge money is handled by the Cashier. Every day the balance as per the cash books maintained by the Cashier alone is passed on to Shri Eldo. So the surplus on account of these transactions must have been retained by the Cashier. Surprisingly enough the Cashier is not seen proceeded. He is not examined in the case to say that he had handed over this surplus amount also to the Secretary Shri Eldo. It may be said that Shri Eldo could have detected this defect had he

exercised due vigilance in examining accounts in time. But it cannot be said that he has misappropriated this amount. So he cannot be held responsible for the misappropriation as alleged in these two items of the charge. The general allegation as already mentioned is not established. So I exonerate Shri Eldo of item No. VI of Ext. M10 and item No. IV of Ext. M12.

14. Item Nos. II and III of Ext. M10 are interconnected and they can be considered together. The Bank had passed resolutions on 18-8-1971, 12-11-1971 and 25-2-1972 that steps should be initiated for realisation of outstanding arreas from the employees and members. Those resolutions are respectively Exts. M32 (a), M32(b) and M32(c) contained in Ext. M32 minutes book. The allegation is that prompt action was not initiated. The defence is that the Bank itself had taken other decisions not to take drastic measures for realisation of arrears. It can be seen from resolution No. 55 contained in page 202 of Ext. M32 itself (dated 26-8-1982 i. e., after the other resolutions) that the delay in realising amounts from the staff had been under the consideration of the Board of the Bank and they have passed another resolution there directing the staff members to pay the outstanding arrears within fifteen days. It was further decided therein that disciplinary action will be initiated against the staff in case payment is not made within the stipulated time. This shows that action against the staff members was under the consideration of the Board and they had subsequently also made further decision granting further time to the defaulters to make the payment. The alternative suggested was disciplinary action which the Board alone has powers to initiate. So the allegation that the Secretary wilfully refused to initiate action against the staff members is not correct. We find another resolution at page 82 of Ext. M31 minutes book passed on 10-8-1972 where the Board has decided against the agenda for realisation of arrears to the effect that legal action need not be initiated and it is only necessary to contact the defaulters personally and persuade them to effect payment. That resolution had prevented the Secretary from initiating action as per the earlier directions. It is most uncharitable in the circumstances to bring a charge against the Secretary that he was responsible for the failure to initiate legal action against the defaulters. I need only say that the Board was passing resolutions for and against realisation of arrears and the Secretary cannot, therefore, be held liable for the failure of the recovery. So he is not guilty of these two items of charges.

15. Item No. IV of Ext. M10 charge is to the effect that delay was committed in remitting the money as rent due to the Forest Department towards the land that was allotted for cultivation. This particular plot of land was allotted by the Bank its member Shri Karakkombil Varghese Joseph with a profit margin. The rent was to be remitted to the Forest Department within a specified time and it is the admitted case that is was not done. Shri Varghese Joseph had paid the amount due from him to the Bank on 16-12-1971. But the remittance to the Forest Department was later made in two instalments on 29-1-1972 and 29-3-1972. A penalty

of Rs. 173.27 had to be paid to the Forest Department on account of the delay in payment. This was also realised from Shri Varghese Joseph by the Bank. Thereupon Shri Joseph filed an arbitration case No. 819/72 against the Bank and obtained Ext.M39 Judgment in his favour for realisation of that amount with interest thereon together amounting to Rs. 197.50. The gist of the charge is that Shri Eldo was responsible for the delay in remitting the amount and thereby caused loss to the Bank in that process.

16. The contention of Shri Eldo is that Shri Varghese Joseph was bound to paythe money much earlier than 16-12-1971 and the Bank itself had permitted an extension to him for payment and the penalty is not for the period after 16-12-1971 till the date of remittance, but the major part of it relates to the interval from the due date till 16-12-1971. In support of this contention resolution No. 525 appearing at page 104 of Ext. M32 is relied on. That resolution dated 1-9-1971 had considered an application for extension of time submitted by Shri Varghese Joseph and it was rasolved that an extension will be granted on obtaining permission from the Forest Department for payment till December of that year. The payment was made accordingly as per the extension in December and the remittance was made not long after in January and March. So the substantial part of the penalty was for the period prior to the date of the remittance by Shri Varghese Joseph. The Bank itself is responsible for that part of the penalty. The Money was also retained by the Bank which in turn was utilising it. Naturally it must have put this money in better use for itslef by obtaining a higher rate of interest than what was paid by way of penalty and Shri Eldo was not in any way benifited by this transaction. To treat such a transaction as a misconduct on the part of Shri Eldo cannot in any way be justified. I find that Shri Eldo is not guilty of any misconduct in this transaction.

17. I tem No. V of Ext. M10 concerns a property which was offered as security by Shri Eldo to the Bank. This security was insisted for holding the post of the Secretary. A property belonging to Shri Eldo was offered as security under Ext. M37 registered security bond. The amount for which the property was charged as security was Rs.2,000/-. Eight cents of land and the buildings therein are the assets on which the charge was created. This was in 1969 and Shri Eldo exchanged that property with another item belonging to a stranger on 23-9-1971 as per Ext. M38.. The property taken by Shri Eldo in exchange was already mortgaged to the Bank by its owner as security for a loan of about Rs. 10,000 which he had availed. To allegations are raised by the Bank against Shri Eldo in connection with Ext. M38 transaction. One is that he alienated the property that was offered as security to the Bank without obtaining prior sanction and the other that he took in exchange a property of which the Bank had a charge and the alienation had affected the interest of the Bank. It is also argued that an employee should not have purchased a property over which the Bank had a charge.

18. Shri Eldo's defence regarding the alienation concerning of his property is that he made the alienations with oral sanction and that the same was later ratified by the Bank. This contention is well established as we find

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resolution No. 537 at page 109 of Ext. M32 on 7-10-1971 wherein the Bank had ratified the alienation of Ext. M37 property and permitted Shri Eldo to offer one acre out of the property that he had taken in exchange as fresh security. It was also resolved that Ext. M37 liability will be released on executing a fresh security bond offering the other one acre as security. This shows that the Bank had absolutely no objection in Eldo entering into Ext. M38 transaction alienating the property over which the Bank had a charge in exchange for another in which also the Bank had an interest. Thus it follows that his transaction was treated as a basis for a misconduct only to inflate the number of allegations against Shri Eldo. It needs hardly be mentioned that Shri Eldo is not guilty of any misconduct concerning this transaction. Howewer it was argued on behalf of the Bank that Shri Eldo did not offer the property taken by him in exchange as security as he was directed in the resolution to which reference is made above. But on 10-11-1972 the Bank had passed another resolution granting Shri Eldo fifteen days time to comply with the direction for furnishing fresh security. That is contained at page 14 of Ext.. M33 He was placed under suspension on 20-11-1972 even before the expiry of that period and so it cannot be said that there was a wilful default to comply with the direction. It is also argued on the basis of certain provisions of Ext. M8 bye-laws and some of the provisions of the Co-operative Societies Act that the above alienation and acquisition should have been made only with the prior written sanction of the Bank. But the records to which reference is already made indicate that the transaction was made in a good faith with the consent and knowledge of the athorities who were then in power and the defects if at all were later ratified. So this argument is also not acceptable. Suffice it to say that Shri Eldo is not guilty of any misconduct on account of this transaction.

19. Now remain the first three items of Ext. M12 concerning textile business which the Bank had. These three can be considered together as the facts involved are inter-connected. It is common case that there was an anual stock verification of the textile goods on 30-6-1972 when the balance stock was found worth Rs. 1,099.17. Item No. III of the charge under consideration is that that stock was below the actuals as per the book balance. For this allegation there is absolutely no evidance. It was also no attempted to be established that there was a shortage. The learned counsel appearing on behalf of the Bank conceded before me that this, charge is not pressed. So we have to proceed further accepting the position that the balance available on 30-6-1972 was worth Rs. 1,099. 17 One allegation as per item No. 1 of Ext. M 12 is that there was no sale of textiles after 30-6-1972 till 20-11-1972 and he should have handed over the same quantity when he handed over charge on suspension and there was deficiency since he accounted only for textiles worth Rs. 205.36. The defieiency works out to Rs. 972. 72. Under item No. II of Ext. M12 the allegation is that records were purposely created as though textiles were sold in auction for Rs. 972.72 on 29-6-1972 when as a matter of fact there was no such Permission for auction or actual auction. The specific allegation under these counts put together is that Shri Eldo comitted loss to the Bank to the tune of Rs. 972.72.

20. Shri Eldo's answer to this charge is that the Bank did not have adequate and suitable storing arrangements for textile goods and therefore they were being kept in open space where by lapse of time they became spoiled dead stock. The Bank also was aware of the situation that these dead stocks could not be disposed of in the ordinary course. Therefore it was decided that it must be disposed of somehow or other reducing the possible loss to the minimum. According to him it was first decided to sell these goods at reduced rates by 5 to 25%. That there was such a resolution is evident from Ext. M32 (d) dated 16-8-1971 at page 102 of the minutes book Ext.M32. No reduction sale was effected as per that resolution. According to Shri Eldo the reduction offer was not attractive for buyers and therefore it was auctioned on 29-6-1972. We have got a series of bills evidencing sale as per the auction and they are contained in Exts. M34, M35 and M36. The bills are signed by the Cashier, Accountant and the Secretary and the proceeds are credited in Ext.M30 cash book at page 70 where it is specifically recorded that the collections were by way of auction of textile goods. MW2 had taken charge as Secretary from Shri Eldo on the former's suspension. He had given evidence that the balance textiles stock that was available was also subsequently auctioned. Ext. M30 accounts were accepted by the Managing Committee in its meeting held on 27-7-1972 as could be seen from page 191 of Ext. M32 minutes book. That means that the collection as per the auction sale was ratified by the Managing Committee. When that is the position Shri Eldo's defence that auction was conducted with the oral permission of the Managing Committee has to be accepted as correct. So there was nothing wrong in the manner in which the textiles stock were handled and disposed of. When the auction sale is taken into account actually there was no shortage in the stock that was handed over to MW2 on Eldo's suspension. Hence I find that Shri Eldo is not guilty of the misconduct attributed under these three items also.

21. From what has been stated above it follows that Shri Eldo was not guilty of any of the misconducts attributed to him. So the question arises are as to what reliefs he is entitled to. Normally he is entitled to the relief of reinstatement if the circumsttances do not warrant the grant of such a relief. But the Bank had pleaded that it has lost confidence in Shri Eldo. That it is so is spoken to by the President MW4. But there should be some reasonable basis to sustain such a plea and deviate from the normal rule. The fact that the Bank without any reasonable basis initiated action against an employee cannot be treated as a circumstance to argue for the position that the relationship had strained and therefore it is no more possible to repose the required confidence in the employee who is to occupy a vital position. In the circumstances of this case it is evident that Shri Eldo was in overall charge of the multifarious activities of the Bank where responsibilities in the various sections were allotted to individual clerks. It is true that Shri Eldo did not exercise that amount of vigilance which is expected of him in effectively supervising the individual transactions entered into by the subordinates. Shri Eldo has given evidence that he had in the circumstances to trust the subordinate to a great extent. That may not be

a sufficient answer for lack of effective supervision. Apart from that there is nothing on record from which it could be said that Shri Eldo had wilfully acted in a manner so as to create a situation whereby the Bank cannot repose further confidence in him. So the argument that Shri Eldo has to be denied the relief of reinstatement for the reason that he is not worthy of further confidence of the Bank or its authorities is not acceptable. Shri Eldo certainly in the circumstances is entitled to the relief of reinstatement.

22. Now remains the question regarding the back wages. There is no case for the Bank that it is under financial strains. On the other hand the evidence of MW4 is that it had made a profit of two lakhs rupees even in the last year. There is a contention that Shri Eldo was profitably employed elsewhere. On that aspect there is only the evidence of Shri Eldo as WW1 where he has said that he was acting as an honorary worker in some service organisation. There is no acceptable evidence to find that Shri Eldo was profitably employed elsewhere. But it has come out in evidence that Shri Eldo is in affluent circumstances as it is admitted by him that he is a landlord owning substantial items of income fetching properties. We have also to consider the fact that lack of effective supervision on the part of Shri Eldo had resulted in certain irregularities at the hands of the subordinates. On a consideration of all these aspects I limit the back wages to which Shri Eldo would be entitled at fifty per cent of the normal arrears. The Bank will pay fifty per cent of the back wages to Shri Eldo and reinstate him with continuity of service to the position of the Secretary from which he was dismissed. There is no data to assess the quantum of back wages. So I leave that matter to be settled between the parties or to invoke other appropriate remedies for quantification of the same. Before parting with this case I would also suggest that Shri Eldo will have to execute a fresh security bond within three months of his reinstatement offering sufficient and valid security which is required for him to continue as the Secretary. He is directed to do so.

23. In the result an award is passed directing the Management to reinstate Shri Eldo with back wages as indicated above.

Ernakulam,
8-8-1983.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witnesses examined on the Management's side:

MW1 Smt. Saradammal.
MW2. Shri Joseph.
MW3. ,, George Thomas.
MW4. ,, K. V. Varkey.

Witness examined on the workman's side :

WW1. Eldo.

Exhibits marked on the Management's side :

Ext. M1. Complaint of Smt. S. Saradammal dated 28-11-1972.
,, M2. Pass Book of Smt. Saradammal with the Canara Bank.
,, M3. Money order coupon for Rs. 81 signed by the Secretary of the Bank on 11-3-1971.
,, M4. A bond dated 17-5-1971 of Sri Joseph Joseph Chittuparambil.
,, M5. A bond dated 29-6-1971 of Sri Joseph Joseph Chittuparambil.
,, M6. Receipt of the Bank dated 29-6-1971 issued to Sri Joseph Joseph.
,, M7. A complaint dated 10-10-1972 from Sri Joseph Joseph.
,, M8. Bye-laws of the Bank.
,, M9. Copy of suspension order dated 16-11-1972 issued to Sri Eldo.
,, M10. Copy of charge memo dated 16-11-1972 issued to Sri Eldo.
,, M11. Explanation of Sri Eldo dated 27-11-1972.
,, M12. Copy of additional charge memo dated 2-12-1972 issued to Sri. Eldo.
,, M13. Explanation of Sri Eldo dated Nil.
,, M14. Copy of a notice dated 11-1-1973 issued to Sri Eldo from the Bank.
,, M15. Enquiry report dated 17-2-1973.
,, M16. Copy of show-cause notice dated 21-2-1973 issued to Sri Eldo.
,, M17. Copy of a notice dated 7-3-1973 issued to Sri Eldo.
,, M18. Copy of dismissal order dated 9-3-1973.
,, M19. Membership Admission Register of the Bank.
,, M19(a). Photostat copy of page 562 of Ext. M19.
,, M20. Loan ledger of the Bank for the period from 31-10-1969 to 28-9-1970.
,, M20(a). Page 232 of Ext. M20.
,, M20(b). ,, 229 ,,
,, M21. Loan ledger of the Bank for the period from 28-9-1972 to 1-3-1975.
,, M21(a). Page 129 of Ext. M21.
,, M22. Attendance Register of the Bank for the period from September 1967 to September 1971.
,, M22(a). Page 46 of Ext. M22.
,, M23. Chitty ledger for chitty No. 223/69.
,, M23(a). Page 57 of Ext. M23.
,, M23(b). Page 45 of Ext. M23.
,, M23(c). ,, 9 ,,
,, M23(d). ,, 9 ,, (last portion)
,, M24. Chitty ledger for chitty No. 252/70.
,, M24(a). Page 20 of Ext. M24.
,, M24(b). ,, 61 ,,

Ext. M25. Chitty journal for the period from 18-8-1972 to 4-2-1978. (chitty No. 223/69).

,, M26. Chitty journal for the period from 3-7-1969 to 16-8-1972 (chitty No. 223/69).

,, M26(a). Page 58 of Ext. M 26

,, M27. Chitty journal for chitty No. 252/70 for the period from 11-3-1970 to 10-3-1976.

,, M28. General cash book for the period from 28-9-1970 to 26-3-1971.

,, M28(a). Page 143 of Ext. M28.

,, M29. General cash book for the period from 24-9-1971 to 15-3-1972.

,, M29(a). Page 79 of Ext. M29.

,, M30. general cash book for the period from 16-3-1972 to 17-8-1973.

,, M30(a). page 15 of Ext. M 30.

,, M30(b). ,, 12 ,,

,, M30(c). ,, 24 ,,

,, M30(d). ,, 44 ,,

,, M31. Agenda book for the period from 10-7-1970 to 11-7-1975.

,, M32. Minutes book for the period from 19-4-1971 to 27-10-1972

,, M32(a). Page 103 of Ext. M 32.

,, M32(b). ,, 125 ,,

,, M32(c). ,, 168 ,,

,, M32(d). ,, 102 ,,

,, M32(e). ,, 16 ,,

,, M33. Minutes book for the period from 10-11-72 to 23-5-1973.

,, M34. Bill book No. 44 (Serial Nos. 2151 to 2200.)

,, M35. Bill book No. 45 (Serial Nos. 2201 to 2250.)

,, M36. Bill book No. 46 (Serial Nos. 225 to 2300.)

,, M37. Security bond dated 11-2-1969 of Sri Eldo.

,, M38. Copy of document No. 2677/71 dated 23-9-1971.

,, M39. Certified copy of the judgement in Arbitration case No. 819/72 of the Asst. Registrar of Co-operative Societies (General) Moovattupuzha.

,, M40. Duplicate chalan of the Dist. Co-operative Bank dated 24-3-1972 for Rs. 113.61.

,, M40(a). Duplicate chalan of the Dist. Co-operative Bank dated 10-4-1972 for Rs. 132.81.

,, M40(b). Duplicate chalan of the Dist. Co-operative Bank dated 17-5-1972 for Rs.93.10.

,, M41. Statement of annual stock verification as on 30-6-1972.

,, M42. Extract of current account of the Bank.

,, M43. Loan ledger from Nos. 2397 to 3377.

,, M43(a). Page 470 of Ext. M43.

,, M44. General cash book for the period from 26-3-1971 to 23-9-1971.

Ext. M44(a). Page 72 of Ext. M44.
,, M44(b). ,, 35 ,,
,, M45. An inland letter dated 11-4-1972 from Sri Baby to the President of the Bank.
,, M46. Loan liability Register of the Bank.
,, M46(a). Page 566 of Ext. M46.

Exhibits marked on the Workmen's side:

,, W1. Note book containing particulars of clothes sold for the period from 23-8-1971 to 20-12-1971.
,, W2. Secretary's mini cash book for the period from 1-8-1971 to 4-5-1972.
,, W3. Secretary's mini cash book for the period from 1-8-1971 to 9-5-1972.
,, W4. Secretary's mini cash book for the period from 10-5-1972 to 17-4-1973.
,, W5. Cashier's mini cash book for the period from 8-5-1972 to 3-11-1972.

Kerala Gazette No.45 dated 15th November 1983.
PART I

GOVERNMENT OF KERALA

Labour(A) Department

NOTIFICATION

G. O. (Rt.) No. 1146/83/LBR. *Dated, Trivandrum, 7th October 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between the Superintendent, Periyar Connemara Estate, Vandiperiyar and the workmen of the above Estate represented by the General Secretary, Estate Staff & Employees Union of South India, Collectorate P. O., Kottayam received by Government on 24-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Saturday, the 17th day of September 1983

Present:

SHRI N. SUKUMARAN B. SC., B. L.,

Presiding Officer.

INDUSTRIAL DISPUTE No. 102/1980

Between

The Superintendent, Periyar Connemara Estate, Vandiperiyar

And

The workmen of the above Estate represented by the General Secretary,
Estate Staff & Employees Union of South India,
Collectorate P. O., Kottayam.

Representations:-

M/s Joseph & Paulose,
Lawyers, Kottayam-2. For *Management.*

Shri Joseph Mackil,
Advocate, Kottayam-2. For *Union*

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 1480/80/LBR dated 21-10-1980 is "Dismissal of Sri. Avarankutty, Supervisor employed in the Periyar Connemara Estate."

II. The dismissal was after a domestic enquiry the correctness of which was tried by me as a preliminary issue. I found as per my order dated 15-9-1983 that the domestic enquiry was properly conducted. It was further found that the findings of guilt rendered by the Enquiry officer are correct.

III. Both sides were heard on the question as to whether the workman is entitled to any reliefs in the matter of punishment. Necessary facts for disposal of the case have been narrated in my preliminary order which I shall here extract in full for ready reference.

"PRELIMINARY ORDER

Shri Avarankutty, a Supervisor of Periyar Connemara Estate was dismissed with effect from 5-10-1978 and the correctness of that dismissal is challenged on his behalf by the Union. According to the Union Shri Avarankutty was the Convener of the Union and the Management therefore had an axe to grind against him. They therefore initiated proceedings against him taking advantage of a petty quarrel involving himself and another worker Shri Periya Swami and finally sacked him after a farce of a domestic enquiry conducted by an Advocate purposely chosen for that purpose. The dismissal is highly unjust and unsustainable. It has to be quashed and the workman reinstated with all benefits.

2 The Management denies the allegation that it had a motive to victimise Shri Avarankutty. According to the Management Shri Avarankutty along with another worker Shri Saithalavi severely manhandled the Estate Watchman Shri Periya Swami during the working hours in the Estate premises at about 4-30 p. m. on 6-6-1978 thereby causing obstruction to the official duties of Shri Periya Swami. The dismissal, according to the Management, was after initiating proper disciplinary proceedings and conducting a valid domestic enquiry. The domestic enquiry was conducted by an eminent lawyer. Shri Avarankutty had participated in the enquiry throughout. He was given sufficient opportunity to attempt to establish his innocence. He availed of that opportunity and cross-examined the witnesses examined on the side of the Management. He also examined two witnesses on his side. The evidence was sufficient enough to establish the guilt of Shri Avarankutty. Accordingly the Enquiry Officer found him guilty. The guilt established was serious and therefore it deserved the punishment of dismissal. The dismissal so inflicted is sustainable and cannot therefore be interfered with.

3. In view of the rival contentions relating to the validity of the domestic enquiry it was proposed to decide that question as a preliminary issue. The Enquiry Officer was examined as MW1. The relevant,

documents concerming the enquiry are contained in Ext. M1 file proved by him. That is all the evidence available.

4. The matter in controversy is as to whether there was a valid and proper domestic enquiry. It is common case that a charge-sheet precisely enumerating the misconduct attributed to Shri Avarankutty was served on him. The substance of the charge is that he along with another co-worker manhandled Shri Periya Swami, the Estate Watchman and prevented him from discharging his official duties at about 4-30 p. m. on 6-6-1978 in the Estate premises in the presence of the Estate Conductor and other workers. Shri Avarankutty had submitted his explanation pleading innocence of the charge. The explanation was not acceptable to the Management and therefore it ordered a domestic enquiry. MW1, an Advocate, was appointed as the Enquiry Officer. MW1 conducted the domestic enquiry with notice to Shri Avarankutty. Shri Avarankutty was supplied with the list of witnesses who were intended to be examined at the enquiry in advance. Avarankutty participated in the enquiry throughout without raising any complaints. The evidence of MW1 and the records contained in Ext. M1 indicate that Shri Avarankutty cross-examined all the three witnesses who were examined on the side of the Management. The two witnesses offered on his side were also examined. There is no case that any request made by the workman was turned down by the Enquiry Officer. The only allegation of the Union in its claim statement as well as the rejoinder regarding the enquiry is that MW1 is a professional enquiry officer and the legal adviser of the Management. This allegation was emphatically denied in the written statement of the Management. Yet it was not even suggested to MW1 that he is the ratiner or the legal adviser of this Management. In other words the specific objection that MW1 is biased is not seen pursued. When that is the position there is no reasonable basis to attack the domestic enquiry as one held in violation of the principles of natural justice. On the other hand the evidence reveals that a fair and impartial enquiry was conducted by MW1 giving all possible and reasonable opportunities to the workman to defend himself. So the enquiry was held properly in accordance with the well established principles of natural Justice.

5. There is no specific contention that the findings of the enquiry officer are perverse. On the other hand the contention is that the records were so manipulated at the enquiry in order to cook up a fool proof case to hook the workman. This contention is an indirect admission that there is no possibility to challenge the findings as perverse. I have already mentioned that there was a fair and impartial enquiry. So the criticism that the records cannot be accepted as satisfactory proof to establish the guilt of the workman is unacceptable. However I shall briefly refer to the available evidence to see whether the finding of guilt rendered by the Enquiry Officer is reasonable.

6. Shri Periya Swamy the alleged victim had filed a complaint regarding the assault and that was the basis for initiation of the disciplinary proceedings. He had given evidence at the enquiry as the first witness in

support of the complaint that he was brutally assaulted by Shri Avarankutty and Shri Saithalavi in the presence of the Estate Conductor and some other workers. The Estate Conductor was examined as the third witness. The 2nd witness is one of the other workmen. All these three witnesses gave clear and consistent evidence that Shri Periya Swamy was manhandled by Sarvasree Avarankutty and Saithalavi. Their evidence was not shattered in any way in cross examination. As against their evidence two other workers were examined in defence. The 2nd defence witness stated that he has no information regarding the incident in question. So his evidence does not serve any purpose. Then there is only the evidence of the first witness for the defence. What is stated by him is that there was only an exchange of hot words between Periya Swamy and Avarankutty at the relevant time. It appears that this witness was examined to say that there was no assault. But this witness also to a certain extent proves the fact that there was some incident involving at least an altercation between Avarankutty and Periya Swami. Of course that much is admitted in the pleadings also. In the claim statement as well as the rejoinder it is admitted that Shri Avarankutty went to Shri Periya Swami in an agitated mood to question him as to why the latter had assaulted his (former's) relation earlier on that day in the Estate. There is evidence to the effect that Shri Hyder, another worker, who happens to be the nephew of Shri Avarankutty had attempted to cut and remove firewood from the estate. That attempt, according to the evidence, was prevented by the Watchman Shri Periya Swami. Periya Swami's evidence is that there was an attempt to assault him when he prevented the unauthorised cutting of firewood and he had therefore approached the Conductor to report about that incident. The second phase which is the subject matter of the charge is alleged to have taken place at that point of time. The Union also has the same version with a differences that Periya Swamy was the assailant on the first occasion and therefore Shri Avarankutty went after him to ask for an explanation in an agitated state of mind. When viewed in this background the possibility is for Avarankutty to have entertained the view that Shri Periya Swamy had assaulted his relation. What happened subsequently is to be decided on the available evidence. The evidence shows that Avarankutty straight away attacked Periya Swamy. The consistent version of the three witnesses examined on the side of the Management that there was such an attack can be accepted in these circumstances in preference to the solitary version of the defence witness. So the conclusion of the Enquiry Officer that Shri Avarankutty is guilty of the misconduct attributed to him is correct and proper.

7. In the result it is found that there was a proper and valid domestic enquiry and that the findings of the Enquiry Officer are correct."

IV. What remains to be decided is as to whether the workman is entitled to any reliefs as per Sec. 11-A of the Industrial Disputes Act. The learned counsel appearing on behalf of the Union pleaded before me that the misconduct proved is rather trivial and the extreme penalty of dismissal cannot therefore be sustained. According to him the workman can very

well be reinstated without causing any hard-burn to the Management in the circumstances of the case. On the other hand the argument advanced on behalf of the Management is that the delinquent along with Shri Saithalavi, a co-worker, brutally assaulted the Watchman Shri Periya Swami who was loyal to his job in detecting an unauthorised act of a relation of Shri Avarankutty and therefore Shri Avarankutty with a pre-meditation caused grievous hurt to the Watchman in the presence of the Division Conductor and other workmen ignorning the repeated requests of the Conductor not to assault the Watchman and hence no leniency in the matter of punishment is permissible. The evidence reveals that Shri Periya Swamy, the Watchman, objected to the cutting and removal of the firewood from the Estate property by Avarankutty's nephew Hyder and snatched away the axe that was used by Shri Hyder. Thereafter Shri Periya Swamy reported that matter to the Conductor who was engaged in weighing green tea leavat. It was at that point of time that Shri Avarankutty along with Shri Saithalavi made their a ppearance on the scene. They straightaway started attacking Periya Swamy. Periya Swamy was given a slap on his cheek, then he was pushed down, kicked and dragged. While doing so they were stating that they were repaying him for having snatched away the axe from Shri Hyder. These circumstances indicate that a Watchman who was faithful to his duties was mercilessly assaulted in the presence of the superior officer the Conductor to whom he had gone to report about Hyder's action. There is also evidence that the Conductor had attempted in vain to persuade the assailants from materialising their intention to assault Periya Swamy. This is a case where an innocent and honest co-worker was attacked only for being loyal to his duties. The circumstances reveal that there was no immediate provocation for the assault. On the other hand the evidence indicates that Shri Avarankutty went to the scene along with Shri Saithalavi fully prepared to assault Shri Periya Swamy. They also materialised their intention to do so. Avarankutty and Saithalavi were simultaneously proceeded against for this misconduct and it is the admitted case that Shri Saithalavi who was also dismissed had accepted the punishment without challenge.

V. The question now is as to whether the extreme penalty of dismissal is sustainable. The facts and circumstances proved are sufficient to say that the misconduct is grave enough to rule out the possibility of a reinstatement of Shri Avarankutty. But I am told that Shri Avarankutty had put in a considerable length of service with this Management. The Management has no case that his antecedents are bad. That means that he is a first

offender. In the circumstances the dismissal is too severe to be sustained. A discharge instead will meet the ends of justice. So I am converting the dismissal into one of discharge with a direction to the Management to pay Shri Avarankutty benefits as though he had been discharged on the date on which he was intended to be dismissed. I do not have necessary data to compute the benefits. So I leave the question of quantification of the benefits to be done by the parties on mutual agreement or by other appropriate proceedings. In the result an award is passed converting the dismissal of Shri Avarankutty into one of discharge as indicated earlier.

Ernakulam,
17-9-1983.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witness examined on the Management's side

MWI. Sri Zachariah Koshy.

Exhibit Marked on the Management's side:

Ext. M1. The file containing the papers of the domestic enquiry.

Kerala Gazette No. 45 dated 15th November 1983.

PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1020|83|LBR. *Dated, Trivandrum, 12th September,* 1983.

The award of the Labour Court Ernakulam in respect of the dispute between the Manager, Thenmallay Estate, Munnar and the workman of the above estate represented by the Secretary, Devicolam Estate Workers' Union, Munnar received by Government on 6-8-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,

Deputy Secretary to Government.

IN THE LABOUR COURT, ERNAKULAM

Present:

SHRI N. SUKUMARAN, B.Sc., B.L.,

Presiding Officer

Thursday, the 28th day of July, 1983

INDUSTRIAL DISPUTE No. 14 OF 1982

Between

THE MANAGER

Thenmallay Estate, Munnar

And

THE WORKMAN

of the above estate represented by the Secretary, Devicolam Estate Workers' Union, Munnar.

Representations:—

Shri K. V. R. Shenoi, Advocate,
M|s. Menon & Pai,
Advocates, Ernakulam. For *Management.*

Shri K. Damodara Kurup,
Advocate, Ernakulam. For *Union.*

AWARD

Government as per G. O. (Rt.) No. 283|82|LBR dated 20-3-1982 have referred the following issue for adjudication to this Court:

"Dismissal of worker Sri Muniandy, Thenmallay Estate, Munnar".

2. In the charter of demands appended to the reference various issues including the claim for reinstatement of Shri Muniandy were raised and the Management asked to file its written statement in defence raised the following contentions:—

Shri Muniandy attacked and assaulted the Division Conductor Shri Thambirajan by cutting him with a skiffing knife at about 4.45 p.m. at the Division Muster ground on 24-4-1980 resulting in a serious injury on the right scapula of the victim. He was charge-sheeted in connection with that incident for the riotous and disorderly behaviour on the premises of the Estate. A domestic enquiry was ordered finding that the explanation submitted by Shri Muniandy was unsatisfactory. Shri Muniandy participated in the domestic enquiry that followed. His guilt was well established in that enquiry. The misconduct being serious the punishment of dismissal was awarded. He is, therefore, not entitled to reinstatement or other reliefs.

3. The Union in the rejoinder while pleading innocence of the worker complains that Shri Muniandy was assaulted by the Manager and the Assistant Manager of the Estate on 24-4-1980 for which he had filed a complaint before the Police and that the allegation that he assaulted Shri Thambirajan was raised as a counter-blast at the instance of the Manager and the Assistant Manager. There was a criminal case against Shri Muniandy on the basis of the very same allegation and the same ended in the acquittal of the workman. The enquiry conducted was only a mere farce and the workman did not have sufficient opportunities to defend himself at the enquiry. The innocent workman is entitled to reinstatement with all consequential reliefs.

4. The question as to whether there was a valid domestic enquiry was considered by me as a preliminary issue at which stage the Enquiry Officer and Shri Muniandy were examined and Exts. M1, M2, W1 and W2 marked. I found as per my order dated 26-2-1983, copy of which is appended to this award as an annexure, that there was no proper domestic enquiry. Thereupon the Management opted to adduce fresh evidence and MWs. 2 to 5 were examined. Exts. M3 to M10 were marked through those witnesses. Shri Muniandy earlier examined as WW1 was recalled and examined further. Some more documents were produced on either side at the time of arguments and they were also marked on admission as Exts. M11 to M14 and W3 and W4.

5. The plea of the workman is that he who is innocent is being made a scapegoat by the Estate Management for having raised a genuine complaint before the Police against the Manager and the Assistant Manager. The Union

does not make any mention regarding the allegation that Shri Thambirajan, the Conductor, sustained injuries at the Division Muster. So we have first to see whether Shri Thambirajan, the Conductor, sustained injuries at the time and place mentioned in the charge. Shri Thambirajan had been examined as MW2 before me. He has given evidence that he sustained an injury on his right scapula at the hands of Shri Menlandy when he was in the muster shed at about 4.45 p.m. on 24-4-1980. He also said that his Assistant Conductors MWs. 4 and 5 were also in the shed along with him and no other persons were present in the immediate vicinity then. MWs. 4 and 5 also have given evidence corroborating the version of MW2. They have also proved Exts. M9 and M10 as the statements given by them respectively before the Enquiry Officer. It is further stated by MW2 that he was immediately removed to the Thenmallay Estate Hospital from where he was removed to the Munnar General Hospital after first aid. MW3, the Resident Medical Officer of the Munnar General Hospital, has proved Exts. M6, M7 and M8 medical certificates wherein the details of the injury sustained by MW2 are given. The Estate Medical Officer who issued Ext. M6 wound certificate was not examined as he is not available in the services of the Company at present and his whereabouts are not known. Ext. M7 is also a wound certificate concerning the same subject issued by the Estate Medical Officer. Ext. M8 is a letter issued from the General Hospital, Munnar to the Estate Manager stating that Shri Thambirajan had been treated as an inpatient from 24-4-1980 to 8-5-1980. There is no serious dispute regarding the genuineness of these certificates. It can be seen from these certificates that Shri Thambirajan had an incised wound 4 cm. long, 2 cm. in width and 3 cm. deep at the centre on his right scapula region about 5 cms. below and behind the acromion. The claim of Shri Thambirajan that he sustained an injury at the Estate Muster is not seriously challenged at the stage of evidence. That he was treated for that injury immediately thereafter in the Estate Hospital and the General Hospital are also not disputed. WW1 has also given evidence that he later knew that Shri Thambirajan had sustained the above injury. The available evidence is sufficient enough to come to the conclusion that Shri Thambirajan sustained the above injury at the Estate Muster shed on 24-4-1980.

6. The Union has raised a doubt as to whether the injury has been sustained at the time alleged by the Management. The time alleged is 4.45 p.m. But in Ext. M8 letter issued from the General Hospital it is mentioned that the injury was sustained at 4.30 p.m. But as a matter of fact Shri Thambirajan was first taken to the Estate Hospital where according to Ext. M7 the Medical Officer saw him at 5.15 p.m. So the time mentioned in Ext. M8 prepared later at the General Hospital need not necessarily be correct as it is not a reproduction of the exact time on the basis of any material data. Even otherwise the time mentioned in Ext. M8 is as " at about 4.30". This discrepancy, therefore, can be ignored and the evidence of MW2 and the other eye witnesses MWs. 4 and 5 that it was at about 4.45 p.m. can be safely accepted. So I hold that Shri Thambirajan sustained the injury at the Estate muster ground at about 4.45 p.m. on 24-4-1980.

7. Now we have to see as to whether Shri Muniandy inflicted the above injury on Shri Thambirajan as alleged by the Management. On this aspect we have only the evidence of MWs. 2, 4 and 5. MW2 has given evidence before me that it was Thambirajan who caused the injury. He has given the details of the circumstances under which it was caused. What he states is that Shri Muniandy came to him when he was engaged in his routine work along with MWs. 4 and 5 at about 4.30 p.m. on the relevant day and asked for a scissors meant for pruning young tea plants, evidently meaning that he wanted to attend to that work the next day. He was told by Shri Thambirajan that he is not being deputed to the pruning work and therefore he need not have the scissors. Still Shri Muniandy insisted that he will do only that work which is seasonal as was done in the previous year. The witness repeated his previous answer that he cannot be deputed as others had already been deputed for the work. Then Shri Muniandy left the place threatening that the witness will know the consequences of his action. He returned after a short while wearing an overcoat covering his hands. He came outside the muster shed to the window and repeated his demand for deputation to pruning work. The witness was sitting against a table near the window, the window being on his right side. Shri Muniandy then stepped over the window and waved a cut with a skiffing knife against his (witness's) neck. The witness shifted his position to avoid the cut. So it missed the neck at which it was aimed and landed at the scapula resulting in the injury. Shri Muniandy attempted to repeat the process which did not succeed in having the desired effect as the witness fell with the chair side-ways. He rose up and prevented Muniandy who by the time attempted to enter the room through the window by holding the chair against it. In the mean-while there was bleeding from the wound and Shri Muniandy left on seeing the same threatening that the witness had escaped only because he was inside the muster shed and that he would have lost his head otherwise The same version is spoken to by the other witnesses in Exts. M9 and M10 even before the Enquiry Officer and they have stated before me that, that is a correct version.

8. The argument advanced by Shri K. Damodara Kurup, learned counsel appearing on behalf of the Union, is that these witnesses are not worthy of any credit. He has pointed out certain discrepancies in the relative positions of those witnesses at the time of the evidence as given by them to say that they are speaking about a coined story. It is common case that the muster shed is a single room with door and a window. The door is normally closed when the Conductor and the Assistant Conductors are working inside. The window has no bars. It is against the window that the table is placed and the Conductor and the Assistant Conductors sit at the table to transact business with the workmen who come there. It is more or less in the form of a counter, the workmen standing outside the window to communicate with those inside. MW2 had stated that the window is on the north whereas it is in the Southern side according to MW4. MW5 said that he cannot say the directions precisely. That witness has said that MW2 was sitting about four feet away from the window. The discrepancy regarding the directions and the position where MW2 was sitting according to MW5's version are sufficient according to the learned

counsel to discard the evidence of these witnesses as highly unbelievable. But this is not a case where there is any serious dispute regarding the existence of a muster shed with a solitary window. If there were more windows than one it could have been said that the exact scene of incident itself is not known to the witnesses. But there is only one window. MW2 has said that he was sitting at one end of the table in a position when his right side was near the window and that MW4 was sitting against him on the other side of the table. There is no discrepancy in between the testimony of these witnesses regarding the relative positions of the witnesses in relation to the table and the window. The only dispute is regarding the position of the window, whether it is on the southern side or the northern side. As there is only one window the discrepancy in the direction is immaterial as the witnesses are likely to commit mistakes regarding the directions. There is the testimony of MW5 that he is not in a position to state the directions correctly. So the criticism on the basis of the discrepancy in the direction stated by the witnesses can be ignored as insignificant.

9. This is not a case where MWs. 2, 4 and 5 had any special grudge against Shri Muniandy. This position is admitted by Shri Muniandy also in his evidence before me. He had admitted further that he had approached the Conductor at about 4.30 p.m. on the relevant day with a request that he may be deputed for pruning work and that the request was turned down. No doubt, he stated further that he did not feel aggrieved of that decision. What he states is that he left the muster ground and thereafter proceeded to Munnar and he is not aware as to what had happened later. The fact that Shri Muniandy was not given the work that he asked for is stated by the Management as a motive for the alleged crime. That the pruning work is more prestiges than the plucking duty to which Shri Muniandy was deputed on those days is more or less clear from the evidence available. In cross-examination it was suggested to MW2 that plucking work is only normally allowed to ladies meaning thereby that it was infradig for general male workers to attend to it. It is also pertinent to note that Shri Muniandy had a special fancy to do the pruning work as he is seen to have staked his claim to have that work allotted to him. So Shri Muniandy evidently had a motive to entertain an ill will towards the Conductor. The Conductor immediately thereafter sustains a serious cut injury. He is taken to the hospital and on the same day he has submitted Ext. M3 written complaint before the Management narrating that Shri Muniandy caused the injury. The details are also mentioned therein. Value of the testimony of MWs. 2, 4 and 5 have to be considered in this background. There is no case that other independent witnesses could have been available at the spot at the relevant time. It is true that MWs. 2, 4 and 5 are mutually interested. But we are in a situation where independent corroboration of their evidence is not possible. There is nothing in evidence apart from the discrepancies to which mention was already made to say that their versions are not worthy of credit. So if the defence that the crime was attributed to Shri Muniandy as a counter-blast to his complaint before the Police against

the Manager and the Assistant Manager is not acceptable, then naturally it should follow that he was the real culprit. I shall proceed to consider that defence.

10. The evidence is that Shri Muniandy was apprehended by the Manager and the Assistant Manager of the Estate who had information about the injury casued to Shri Thambirajan and taken to the Munnar Police Station where a case was also registered immediately against him for the assault. Shri Muniandy had admitted in his evidence that he was released on bail from the Police Station only the next day. He preferred the complaint against the Manager and the Assistant Manager stating that he was assaulted and kept under wrongful restraint before the Police Station at 5.30 p.m. on 25-4-1980. Ext. M11 is an attested copy of the information given by him and the F. I. R. recorded on its basis registering a case as Crime 42|80. Ext. M12 is an attested copy of the mahazar prepared by the Police in connection with that case and the same was finally referred by Police as per the original of Ext. M14 stating that the complaint was false. Ext M13 is an attested copy of the notice issued by the Police expressing the intention to refer the case. After the refer report Shri Muniandy filed a private complaint before the First Class Magistrate, Devicolam. Ext. W3 attested copy contains that complaint and the sworn statement given by Shri Muniandy on its basis. The accused were discharged by the learned Magistrate in that case as per Ext. W4 for the absence of the complainant. When viewed in the sequence of events the contention of the Union that the crime was attributed to Shri Muniandy for the reason that he had raised a complaint against the Manager and the Assistant Manager cannot be accepted even for a moment. He raised the complaint before the Police only on the evening of 25-4-1980 after he was released on bail from the Police Station where he was taken to in connection with a case which was already registered against him for assault of Shri Thambirajan. In this background the complaint raised by Shri Muniandy can only be a counter-blast and it cannot be said that things happened the otherway round. So the defence that a false case was foisted since he had earlier raised a genuine complaint cannot at all be accepted. When that is the position the evidence given by MWs. 2, 4 and 5 conclusively proves the guilt against Shri Muniandy regarding the charge that he caused the injury that was sustained by Shri Thambirajan.

11. Ext. W2 is a judgment of the First Class Magistrate, Devicolam in C. C. 86|80. That was a case charge-sheeted by the Police against Shri Muniandy for assaulting Shri Thambirajan. The case ended in the acquittal of the accused as per the judgment. An argument is advanced on the basis of that acquittal that a separate finding is not warranted by this Court. But it is seen from Ext. W2 that the accused was acquitted without examining any of the material witnesses. The injured and the eye witnesses were not examined. The reasons stated for their non-examination is that their attendance could not be secured inspite of the summons and warrants issued to them. MW2 has stated before me that no such summons or warrant was taken to him or the

other witnesses. So Ext. W2 is not an acquittal on merits after considering the evidence that could have been adduced in the case. Such an acquittal does not stand on the way of this court appreciating the evidence actually adduced for coming to a different conclusion. So Ext. W2 judgment is no bar for coming to an independent conclusion regarding the guilt or otherwise of Shri Muniandy on the same cause of action. As already mentioned the evidence is sufficient to find Shri Muniandy guilty of the charge.

12. Now remains the question as to whether Shri Muniandy deserves any reliefs in the matter of punishment as per Sec. 11 A of the Industsrial Disputes Act. This is a case where Shri Muniandy deliberately casued hurt to the superior officer on the premises of the Estate for not allotting to him a work of his choice. The circumstances indicate that Shri Muniandy desired more serious consequences than what had actually resulted. A lethal weapon, a skiffing knife, which according to the descriptions given by MW2 has a total length of 1½ feet of which one foot is a sharp blade 1¼ inches in width with a curved pointed end was used. This was aimed at the victim's neck which by luck hit at a different spot avoiding more severe consequences. A subordinate employee who committed such a crime deserves the maximum punishment of dismissal that was awarded by the Management. So I find no reason to interfere with that punishment in any manner. In the result an award is passed confirming the dismissal of Shri Muniandy.

Ernakulam,
28-7-1983

N. SUKUMARAN,
Presiding Officer.

APPENDIX

Witnesses examined on the Management's side:

MW1 Shri Theodore Edward.
MW2 " Thambirajan.
MW3 Dr. Peter Gonsalves,
MW4 Shri Menishious.
MW5 M. Josiah.

Witness examined on the Union's side:

WW1 Muniandy.

Exhibits marked on the Management's side:

Ext. M1. The file containing the papers in connection with the domestic enquiry held against Shri Muniandy.

" M1(a) Order of the Management authorising Shri Theodore Edward, Labour Officer to conduct the enquiry, dated 16-5-1980 (in Ext. M1).

Ext. M1(b) Enquiry proceedings (in Ext. M1)

" M1(c) Findings of the Enquiry Officer (in Ext. M1)

" M1(d) The statement of the worker that he has no evidence in Ext. M1).

" M1(e) A statement of the worker (in Ext. M1).

" M2 The file containing the transliteration of Ext. M1 file.

" M3 A statement from Shri K. G. Thambirajan dated 24-4-1980 (in Ext. M1).

" M4 Pocket check roll register of Thenmallay Estate for April 1980.

" M4(a) A page in Ext. M4 showing the name of Muniandy.

" M5 Plucking check roll register of Thenmallay Estate for April 1980.

" M5(a) A page in Ext. M5 showing the name of Muniandy.

" M6 Report of the group Medical Officer regarding the wounds of Shri Tambirajan dated 25-4-1980 (in Ext. M1).

" M7 Wound certificte from the Medical Officer dated 16-5-1980 (in Ext. M1).

" M8 A letter dated 16-5-1980 from the General Hospital, Munnar to the Manager, Thenmallay Estate regarding Shri Thambirajan's treatment (in Ext. M1).

" M9 Deposition of third witness in the domestic enquiry proceedings (in Ext. M1).

" M10 Deposition of 4th witness in the domestic enquiry proceedings (in Ext. M1).

" M11 Certified copy of first information report and F.I.S. in crime No. (MNR) 42|80 on the file of Judicial 1st Class Magistrate's Court, Devicolam.

" M12 Certified copy of Mahazar in crime No. (MNR) 42|80.

" M13 Certified copy of a notice in crime No. (MNR) 42|80.

" M14 Certified copy of a refer charge sheet in crime No. (MNR) 42|80.

Exhibits marked on the Union's side:

Ext. W1 Copy of a complaint dated 27-5-1980 submitted to the Management by Shri Muniandy against the enquiry.

" W2 Certified copy of the judgment in C. C. 86|80 on the 1st Class Magistrate, Devicolam.

" W3 Certified copy of a complaint and sworn statement of Shri Muniandy in C.C. 295|80 of Judicial First Class Magistrate Court, Devicolam.

" W4 Certified copy of order in C.C. 295|80 of Judicial First Class Magistrate Court, Devicolam.

Annexure

IN THE LABOUR COURT, ERNAKULAM

Present:

SHRI N. SUKUMARAN, B.Sc. B.L.,

Presiding Officer

Saturday, the 26th February, 1983.

INDUSTRIAL DISPUTE No. 14 of 1982

Between

THE MANAGER

Thenmallay Estate, Munnar

And

THE WORKMAN

of the above estate represented by the Secretary, Devicolam Estate Workers' Union, Munnar.

Representations:—

Shri K. V. R. Shenoi,
Advocate,
M|s. Menon & Pai,
Advocates, Ernakulam. — For *Management.*

Shri K. Damodara Kurup,
Advocate, Ernakulam. — For *Union.*

ORDER

Dismissal of Shri Muniandy, a worker of Thenmallay Estate, Munnar, is what is involved in this reference. In the charter of demands appended to the reference there is only a claim for reinstatement without any other elaborate contentions.

2. The Management in its written statement contends that Shri Muniandy attacked and injured his superior officer the Lower Division Conductor Shri Thambirajan by cutting with a skiffing knife at about 4.45 p.m. on 24-4-1980 at the Lower Division Muster ground and thus he committed the misconduct of riotous or disorderly behaviour on the premises of the Estate, an act subversive to discipline, and that the same was established in a properly conducted domestic enquiry and therefore the punishment of dismissal has to be sustained.

3. The Union in its rejoinder while pleading innocence of the worker states that there was no valid and proper domestic enquiry. It is further complained that there was only a show of a domestic enquiry without giving the workman sufficient opportunity to defend himself. The enquiry, according to the Union, is therefore not proper and the workman who is innocent is to be reinstated with all benefits.

4. The validity of the domestic enquiry being challenged it became necessary to consider that aspect on a preliminary basis and this order concerns only to that. The enquiry was conducted by the then Labour Officer of the Management concern. He has proved Exts. M1 and M2 files regarding the enquiry. The affected workman gave evidence as WW1. The documents proved by him are Exts. W1 and W2.

5. Though not specifically pleaded an objection was raised at the stage of the trial by the Union that MW1 who conducted the enquiry was the Labour Welfare Officer and therefore there was prohibition as per rules against himself conducting the domestic enquiry. This contention is raised on the basis of the admissions made by MW1 that he is at present the Labour Welfare Officer and as per the rules Labour Welfare Officers are not expected to conduct domestic enquiries into misconducts. But MW1 had clarified the position that he was only a Labour Officer when he conducted this enquiry. The claim of MW1 that he was not the Welfare Officer at the relevant time is not challenged by the Union. In these state of affairs the argument that the entire enquiry has to go for the reason that MW1 was the Welfare Officer cannot be accepted as MW1 was not then a Welfare Officer.

6. The workman was served with a show cause notice regarding the incident which is alleged to have taken place on the 24th as per memo dated 25-4-1980. This memo was proved at the enquiry by the Manager of the Estate examined as the first witness. The explanation submitted by Shri Munlandy and 10 other documents were proved by that witness at the enquiry. The documents thus marked are Nos. 1 to 11. In the explanation Shri Muniandy had pleaded innocence of the allegations against him. This explanation was not satisfactory to the Management and so a formal charge was drawn and served. That is document No. 3 in which the proposal to conduct a domestic enquiry by MW1 on 20-5-1980 was also intimated. The workman applied for time for an adjournment of the enquiry and that application is document No. 4. Along with that application the workman had submitted another representation with copy to the Enquiry Officer in which he requested that he may be furnished with the statement of allegations against him, the list of witnesses intended to be examined on the side of the Management at the enquiry and the copies of records, if any, that are likely to be utilised. He also requested that he may be permitted to have the assistance of a Union Official at the enquiry. That was document No. 5 at the enquiry. Its reply marked as document No. 6 is dated 20-5-1980 wherein the enquiry was adjourned to the 26th. It was stated therein that the allegations are contained in the show cause notice and the

charge-sheet already served. His request to have the assistance of a Union leader was refused, but he was permitted to have the assistance of a co-worker at the enquiry. Regarding details of the witnesses and the documents it was said that they will be produced at the enquiry. The enquiry was adjourned as requested and the adjourned date was fixed to 26-5-1980. On that day the enquiry was started and completed examining five witnesses for the Management and marking 11 documents. The same day the workman was served with a memo which is document No. 7 at the enquiry which contained the names of five witnesses examined on the side of the Management. Witness Nos. 1 and 5 respectively the Manager and the Assistant Manager gave evidence in English and the other three gave evidence in Tamil. There was an interpreter at the enquiry and it is submitted that he had interpreted depositions given in English to the workman who knows only Tamil in that language. The workman did not cross-examine any of the witnesses. He also refused to sign the depositions made by the witnesses. But he had signed some of the pages where he had given statements. There is a record to the effect that the workman had stated that he had no defence evidence. That statement is also signed by him. MW1 has given evidence that Ext. M1 file contains a true account of the proceedings. Ext. M2 file contains the transliterations of the depositions and documents.

7. The main complaint of the Union is that the workman who is illiterate could not effectively defend himself because his request to have advance information regarding the witnesses and documents was not granted. As already mentioned the workman had asked for such details which were not furnished to him before the enquiry was started. As already mentioned the workman had asked for such details which were not furnished to him before the enquiry was started. The list of witnesses was furnished to him only on the 26th when the enquiry started. Two witnesses gave evidence in English. Copies of documents were not furnished to him at any stage. Of course document Nos. 1 to 6 marked at the enquiry are communications between the parties and the workman was possessed of them before the enquiry started. No useful purpose could have been served by serving document No. 7, the list of witnesses, when the enquiry was about to commence. Document No. 8 is said to be a report filed by the injured Conductor Shri Thambirajan. That is the earliest version given by the injured. That is in English. The workman who is admittedly illiterate could not have understood the contents of that document and utilised it for cross-examining the injured who was examined as the 2nd witness. Same is the position regarding document Nos. 9, 10, and 11. They are all wound certificates issued by the Medical Officers who treated the injured. They are all in English. They were proved through the Manager who produced them for the first time when he gave evidence before the enquiry officer from his custody. It needs hardly be stated that an illiterate worker like Muniandy could not have understood the contents and implications of these documents and attacked them effectively at the enquiry where it was produced for the first time without previous notice to him. Of course the Enquiry Officer stated in his evidence that the English documents were also translated to the workman. It is also argued on behalf of the Management that the workman had the

assistance of a co-worker. But the co-worker was also another illiterate workman who could not do anything better than the delinquent himself. It is not known as to why the Management who was possessed of these documents refused to give advance informations regarding the same to the workman and reserved them for production as a surprise at the enquiry. The predicament of the workman in the circumstances could easily be understood. He pleaded innocence from the very beginning. He was eager to participate in the enquiry and to defend himself. For that matter he asked for details of the materials that are likely to be utilised against him. They were not furnished. Witnesses and documents were introduced at the enquiry where he was helpless to attack them by cross-examination and criticism and that probably is the reason why he refused to cross-examine the witnesses. He also refused to sign the depositions probably because he was not prepared to subscribe his assent to the proceedings. In these state of affairs it cannot be said that adequate opportunities were given to the workman to defend himself. The enquiry for that reason is vitiated and it cannot be said to be proper. So I hold that there was no proper and valid enquiry. It is unnecessary to consider the merits in the circumstances. In the result it is hereby found that there was no proper and valid domestic enquiry.

Dictated to the Confidential Assistant, transcribed and typed out by him, corrected by me and declared in open court on this the 26th day of February, 1983 at Munnar.

N. SUKUMARAN,

Presiding Officer.

Kerala Gazette No. 45 dated 15th November 1983.
PART I Section iii

കേരള സർക്കാർ

നിയമ (നിയമ നിർമ്മാണം-ബി) വകുപ്പ്

വിജ്ഞാപനം

നമ്പർ 13992/ലജ്-ബി1/83/ലാ. തിരുവനന്തപുരം, 1983 സെപ്റ്റംബർ 6/ 1905 ഭാദ്ര 15.

1983 സെപ്റ്റംബർ 5-ാം തീയതി ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയ താഴെ പറയുന്ന ഓർഡിനൻസ്, പൊതുജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധപ്പെടുത്തുന്നു.

ഗവർണ്ണറുടെ ഉത്തരവു പ്രകാരം,
കെ. വിശ്വനാഥൻ നായർ,
നിയമവകുപ്പ് സെക്രട്ടറി.

1983-ലെ 31-ാം നമ്പർ ഓർഡിനൻസ്

1983-ലെ കേരള സിവിൽ കോടതി (ഭേദഗതി) ഓർഡിനൻസ്

ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ മുപ്പത്തിനാലാം സംവൽസരത്തിൽ ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയത്.

1957-ലെ കേരള സിവിൽ കോടതി ആക്റ്റ് വീണ്ടും ഭേദഗതി ചെയ്യുന്നതിനുള്ള ഒരു ഓർഡിനൻസ്.

പീഠിക.—കേരള നിയമസഭ സമ്മേളനത്തിലല്ലാത്തതിനാലും, സത്വര നടപടികളെടുക്കേണ്ട സാഹചര്യങ്ങൾ നിലവിലുണ്ടെന്ന് കേരളഗവർണ്ണർക്ക് ബോദ്ധ്യം വന്നിരിക്കുന്നതിനാലും ;

ഇപ്പോൾ, അതിനാൽ, ഇൻഡ്യൻ ഭരണഘടനയുടെ 213-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച്, കേരള ഗവർണ്ണർ താഴെപ്പറയുന്ന ഓർഡിനൻസ് വിളംബരപ്പെടുത്തുന്നു.

1. ചുരുക്കപ്പേരും പ്രാരംഭവും.—(1) ഈ ഓർഡിനൻസിന് 1983-ലെ കേരള സിവിൽകോടതി (ഭേദഗതി) ഓർഡിനൻസ് എന്ന് പേർ പറയാം.

(2) ഇതു ഉടൻതന്നെ പ്രാബല്യത്തിൽ വരുന്നതാണ്.

2. 1957-ലെ 1-ാം ആക്റ്റ് താൽക്കാലികമായി ഭേദഗതി ചെയ്യണമെന്ന്.—

ഈ ഓർഡിനൻസ് പ്രാബല്യത്തിലിരിക്കുന്ന കാലത്ത് 1957-ലെ (1957-ലെ 1) കേരള സിവിൽ കോടതി ആക്റ്റ് (ഇതിനുശേഷം പ്രധാന ആക്റ്റ് എന്നാണ് പരാമർശിക്കപ്പെടുക) 3-ാം വകുപ്പിൽ പ്രത്യേകം പറഞ്ഞിട്ടുള്ള ഭേദഗതികൾക്കു വിധേയമായി പ്രാബല്യം ഉണ്ടായിരിക്കുന്നതാണ്.

3. 11-ാം വകുപ്പിന്റെ ഭേദഗതി.—

പ്രധാന ആക്റ്റ് 11-ാം വകുപ്പ് (2)-ാം ഉപവകുപ്പിൽ "അയ്യായിരം രൂപ" എന്ന വാക്കുകൾക്കു പകരം "പതിനയ്യായിരം രൂപ" എന്ന വാക്കുകൾ ചേർക്കേണ്ടതാണ്.

പി. രാമചന്ദ്രൻ,
ഗവർണ്ണർ.

(ശരിത്തർജ്ജമ)

പി. ജി. വിമലാദേവി,
അണ്ടർ സെക്രട്ടറി (നിയമവകുപ്പ്).

GOVERNMENT OF KERALA

Agriculture (Co-operation—C) Department

NOTIFIGATION

No. 91936/G3/82/AD. *Dated, Trivandrum, 19th October* 1983.

S.R.O. No. 1609/83.—Whereas under subsection (1) of section 59 of the Kerala Go-operative Societies Act, 1969 (21 of 1969) a society shall not make a loan to any person or a society other than a member;

And whereas the Kerala State Go-operative Bank Ltd., Mahathma Gandhi Road, Trivandrum-1 has decided to make a loan of Rs. 1.80 lakhs for a period of five years to Sri S. Sivaramakrishnan, T. G. No. 27/370 Athani Road, Vanchiyur for the purpose of constructing a building in the landed property of Sri. S. Sivaramakrishnan, comprised in Survey No. 316/2-4 and 317/2-4 in Vanchiyur Village in Trivandrum Taluk for accommodating the Kaithamukku Branch of the said Bank, on the terms and conditions agreed upon for the purpose;

And whereas Sri. S. Sivaramakrishnan is not a member of the Bank;

And whereas the Registrar of Go-operative Societies has requested Government to exempt the said Bank from the provisions of sub-section (1) of section 59 of the, said Act;

And whereas the Government are satisfied that it is necessary in the public interest to exempt the said Bank from the provisions of sub-section (1) of section 59 of the Kerala Go-operative Societies Act, 1969 for the purpose of enabling the said Bank to make a loan of Rs. 1.80 lakhs to Sri S. Sivaramakrishnan;

Now, therefore, in exercise of the powers conferred by section 101 of the Kerala Go-operative Societies Act, 1969, the Government of Kerala hereby exempt the Kerala State Co-operative Bank Ltd. Mahathma Gandhi Road, Trivandrum-1 from the provisions of sub-section (1) of section 59 of the said Act to enable the said Bank to make a loan of Rs. 1.80 lakhs to Sri. S. Sivaramakrishnan on satisfying the terms and conditions agreed upon for the limited purpose of constructing a building in Survey No. 316/2-4 and 317/2-4 in Vanchiyur Village, Trivandrum Taluk, or accommodating the Kaithamukku branch of the said Bank.

By order of the Governor,
E. DAMODARA MARAR,
Additional Secretary to Government.

G 1640

[P.T.O.]

Explanatory Note

(This does not form part of the Notification but is intended to indicate its general purport.)

For the opening of branch of the Kerala State Co-operative Bank at Kaithamukku, the Bank resolved to advance a sum of Rs. 1.80 lakhs at an interest of 13½% for a period of 5 years to Sri. S. Sivaramakrishnan for the purpose of constructing a building at Kaithamukku and has sought exemption from Government under Section 59 of the Kerala Co-operative Societies Act, 1969. The proposed notification is for achieving the above object.

GOVERNMENT OF KERALA

Labour (E) Department

NOTIFICATION

G.O.Rt.No. 1232/83/LBR. *Dated, Trivandrum*, 25th *October* 1983

S. R. O. No. 1610 T/83.—Whereas the Government of Kerala are satisfied that public interest so requires that the opening time of the two cinema theatres namely Mymoon Cinema and Lulu Cinema, Cochin, should be fixed as 12 noon, for the purposes of conducting noonshows;

Now, therefore, in exercise of the powers conferred by subsection (2) of section 10 of the Kerala Shops and Commercial Establishments Act 1960 (34 of 1960), the Government of Kerala hereby order that for a period of three months from the date of this notification, the said theatres shall not be opened earlier than 9 a. m. on Saturdays, Sundays and public holidays which fall on other days of the week, and 12 noon on all other days, or closed on any day later than 2 a. m.

By order of the Governor,
U. MAHABALA RAO,
Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

The provisions of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960) are applicable to the Cinema Theatres in this State. The Managing Partner, Mymoon and Lulu theatres have requested Government to issue orders permiting them to conduct noonshows from 12 noon in the two theatres under their management. Government consider that the request may be allowed for a period of three months. This notification is to achieve the above object.

G. 1641

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G. O. (Rt.) No. 3694/83/LA&SWD. *Dated, Trivandrum, 12th October* 1983.

S. R. O. No. 1611 83.—In exercise of the powers conferred by sub-section (2) of section 62 of the Kerala Panchayats Act, 1960, (32 of 1960), the Government of Kerala, after consulting the Keezhmad Panchayat hereby exclude from the operation of the said Act, the public road specified in the Schedule below, which is vested in the said Panchayat, and registered in the Revenue Records as 'Road Poramboke'.

SCHEDULE

1.	Name of District	..	Ernakulam
2.	Name of Taluk	..	Alwaye
3.	Name of Village	..	Alwaye
4.	Name of Panchayat	..	Keezhmad
5.	Name of road	..	Thottumughom—Erumathala road
6.	Length of road	..	2.7 Kilometres.
7.	Width of road	..	8 Metres
8.	Places through which the road passes	..	Erumathala and Thottumughom
9.	Points at which the road starts and ends.	..	Starts from Alwaye-Perumbavoor road and ends at Alwaye-Munnar road.

By order of the Governor,

G. GOPALAKRISHNAN,
Deputy Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per G.O. (Rt) 1135/80/PW&E dated 24-7-1980 Government have accorded sanction to transfer the Thottumughom-Erumathala road starting from Alwaye-Perumbavoor road and ends at Alwaye-Munnar road to Public Works Department from Keezhmad Panchayat for the purpose of improvements of road, with the concurrence of the concerned Panchayat as required under the proviso to sub-section (2) of section 62 of the Kerala Panchayats Act. This notification is intended to exclude the above road from the operation of the provisions of the Kerala Panchayats Act.

G. 1610

Kerala Gazette No. 45 dated 15th November 1983.

PART I **Section iv**

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G.O (Rt.) No. 3696/83/LA&SWD. *Dated, Trivandrum, 12th October* 1983.

S. R. O. No. 1612/83.—In exercise of the powers conferred by sub-section (2) of section 62 of the Kerala Panchayats Act, 1960 (32 of 1960), the Government of Kerala, after consulting the Chengala, Puthige, and Bediadka Panchayat, hereby exclude from the operation of the provisions of the said Act, the Public road specified in the Schedule below. which is vested in the said Panchayats and registered in the Revenue Records as "Road Poramboke".

SCHEDULE

1.	Name of District	..	Cannanore
2.	Name of Taluk	..	Ka argod
3.	Name of Village	..	Muttathody
4.	Name of Panchayats	..	Chengala, Puthige and Bediadka
5.	Name of road	..	Vidyanagar—Neerchal — Mundathadka road
6.	Length of road	..	16 ·28 Kilometres
7.	Width of road	..	8 metres
8.	Important places it connects	..	Vidyanagar — Neerchal, Mundathadka
9.	Points at which the road starts and ends	..	Vidyanagar—Mundathadka

By order of the Governor,
C. GOPALAKRISHNAN,
Deputy Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per G. O. (Rt.) 680/79/PW dated 29-3-1979 Government have accorded sanction to transfer the Vidyanagar-Neerch l-Mundathadka road starting from Vidyanagar to Mundathadka to Public Works Department from Chengala, Puthiga, and Bedaidka Panchayat for the purpose of improvements of road, with the concurrence of the concerned Panchayats as required under the proviso to subsection (2) of section 62 of the Kerala Panchayats Act. This notification is intended to exclude the above road from the operation of the provisions of Kerala Panchayats Act.

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G. O. (Rt.)No. 3693/83/LA & SWD. *Dated Trivandrum, 12th October* 1983.

S.R.O. No. 1613/83.—In exercise of the powers conferred by sub-section (2) of section 62 of the Kerala Panchayats Act, 1960 (32 of 1960), the Government of Kerala, after consulting the Aralam Panchayats, hereby exclude from the operation of the said Act, the public road specified in the Schedule below, which is vested in the said Panchayat and registered in the Revenue Records as "Road Poramboke".

SCHEDULE

1.	Name of District	Cannanore
2.	Name of Taluk	Tellicherry
3.	Name of Village	Aralam
4.	Name of Panchayats	Aralam
5.	Name of road	Palapuzha – Keezhpally (via) Aralam Farmroad
6.	Length of road	1.200 Kilometres
7.	Width of road	8 Metres
8.	Important places it connects	Palapuzha and Keezhpally
9.	Name of places at which the road starts and ends	Palapuzha—Keezhpally

By order of the Governor,
C. GOPALAKRISHNAN,
Deputy Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

As per G. O. (Rt) 1751/81/PW. dated 13-10-1981 Government have accorded sanction to transfer the Palapuzha—Keezhpally road starting from Palapuzha to Keezhpally to Public Works Department from Aralam Panchayat for the purpose of Improvements of roads with the concurrence of the concerned Panchayat as required under the proviso to subsection (2) of section 62 of the Kerala Panchayats Act. This notification is intended to exclude the above road from the operation of the provisions of the Kerala Panchayats Act.

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G.O. (Rt.) No. 3563/83/LA&SWD. *Dated, Trivandrum, 30th September* 1983.

S. R. O. No. 1614/83.—In exercise of the powers conferred by sub-section (2) of section 62 of the Kerala Panchayats Act, 1960 (32 of 1960), the Government of Kerala, after consulting the Karavaram Panchayat, hereby exclude from the operation of the said Act, the land specified in the Schedule below, which is vested in the said Panchayat.

SCHEDULE

District—Trivandrum. *Taluk*—Chirayinkil.

Village—Karavaram. *Panchayat*—Karavaram.

Nature and location of the land—Edavazhi Poramboke lying on the eastern side of N.H. 47 at km. 526/900 of N.H. 47

Survey No.	*Extent of Land*
157/1	20 sq. m.
187/1	60 sq. m.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purpose).

The Executive Engineer, National Highway Division, Quilon has requested for assignment of 20 sq. m. of Edavazhi Poramboke land comprised in sy. No. 157/1 and 60 sq. m. of Edavazhi Poramboke land comprised in sy. No. 187/1 of Karavaram Village in Chirayinkil Taluk in favour of Central Government for the purpose of the Development of N.H. 47 in consultation with the Karavaram Panchayat as required under the proviso to subsection (2) of section 62 of the Kerala Panchayat Act, 1960. This notification is intended to exclude the above land from the operation of the provision of the Kerala Panchayat Act.

എസ്.ആർ.ഒ. നമ്പർ **1614/83.**—1960-ലെ കേരള പഞ്ചായത്ത് ആക്റ്റ് (1960-ലെ 32) 62-ാം വകുപ്പ് (2)-ാം ഉപവകുപ്പുപ്രകാരം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച് കേരള സർക്കാർ, കരവാരം പഞ്ചായത്തുമായി ആലോചിച്ചശേഷം പ്രസ്തുത പഞ്ചായത്തിൽ നിക്ഷിപ്തമായിരിക്കുന്ന, താഴെ പട്ടികയിൽ പറഞ്ഞിരിക്കുന്ന ഭൂമിയെ . പ്രസ്തുത ആക്റ്റിന്റെ പ്രവർത്തന പരിധിയിൽ നിന്നും ഇതിനാൽ ഒഴിവാക്കിയിരിക്കുന്നു.

G. 1575

പട്ടിക

താലൂക്ക്—ചിറയിൻകീഴ്.

ജില്ല—തിരുവനന്തപുരം.

പഞ്ചായത്ത്—കരവാരം.

വില്ലേജ്—കരവാരം.

ഭൂമിയുടെ സ്വഭാവവും സ്ഥാനവും—നാഷണൽ ഹൈവേയുടെ 526/900 കി. മീററർ, നാഷണൽ ഹൈവേയുടെ കിഴക്ക് ഭാഗത്ത് കിടക്കുന്ന ഇടവഴി പുറമ്പോക്ക്

ഭൂമിയുടെ സർവ്വേ നമ്പരും വിസ്തീർണ്ണവും—157/1.20 ച: മീ.
187/1.60 ച: മീ.

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിന്റെ ഭാഗമല്ല. എന്നാൽ അതിന്റെ പൊതു ഉദ്ദേശം സൂചിപ്പിച്ചുകൊണ്ടുള്ളതാണ്.)

1960-ലെ കേരള പഞ്ചായത്ത് ആക്ട് 62-ാം വകുപ്പ് (2)-ാം ഉപവകുപ്പിന്റെ ക്ലിപ്ത നിബന്ധനയിൽ ആവശ്യപ്പെടുന്ന പ്രകാരം കരവാരം പഞ്ചായത്തിന്റെ സമ്മതത്തോടുകൂടി എൻ. എച്ച് 47-ന്റെ വികസനത്തിന് വേണ്ടി ചിറയിൻകീഴ് താലൂക്കിൽ കരവാരം വില്ലേജിൽ സർവ്വേ നമ്പർ 157/1-ൽ പെട്ട 20 സ്ക്വയർ മീററർ ഇടവഴി പുറമ്പോക്കും 187/1-ൽപെട്ട 60 സ്ക്വയർ മീററർ ഇടവഴി പുറമ്പോക്കും കേന്ദ്ര സർക്കാരിന് ഏൽപ്പിച്ചു കൊടുക്കാൻ സർക്കാർ അനുവാദം നൽകിയിട്ടുണ്ട്. ഈ വിജ്ഞാപനം, മേൽ പറഞ്ഞ ഭൂമി കേരള പഞ്ചായത്ത് ആക്ടിന്റെ വ്യവസ്ഥയുടെ പ്രവർത്തന പരിധിയിൽ നിന്നും ഒഴിവാക്കുന്നതിനുദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.

By order of the Governor,
M. S. K. Ramaswamy,
Commissioner & Secretary to Government.

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G.O. (Rt.) No. 3692/83/LA&SWD. *Dated, Trivandrum,* 12*th October* 1983.

S. R. O. No. 1615/83.—In exercise of the powers conferred by sub-section (2) of Section 62 of the Kerala Panchayats Act, 1960 (32 of 1960), the Government of Kerala, after consulting the Mylom Panchayat, hereby exclude from the operation of the said Act, the public road specified in the schedule below, which is vested in the said Panchayat.

SCHEDULE

1.	Name of District	.. Quilon
2.	Name of Taluk	.. Kottarakara
3.	Name of Village	.. Mylom
4.	Name of Panchayat	.. Mylom
5.	Name of road	.. Kodiyattukadavu to Panavila Junction
6.	Length of road	.. 3.035 Kilometres
7.	Width of the road	.. 8 Metres
8.	Important places through which the road passes	.. Kodiyattukadavu to Panavila Junction
9.	Points at which the road starts and ends	.. Mylom Pattazhi road

By order of the Governor,
C. GOPALAKRISHNAN,
Deputy Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

As per G. O. (Rt.) No. 1123/81/PW & E. dated 30-6-1981 Government have accorded sanction to transfer the Kodiyattukadavu Panavila Junction road to Public Works Department from the Mylom Panchayat for the purpose of improvements of road, with the concurrence of the concerned Panchayat as required under the proviso to subsection (2) of section 62 of the Kerala Panchayats Act. This notification is intended to exclude the above road from the operation of the provisions of the Kerala Panchayats Act, 1960.

GOVERNMENT OF KERALA

Abstract

Kerala Buildings (Lease and Rent Control) Act, 1965—Enforcement in Chittariparambu Panchayat—Orders issued

PUBLIC WORKS (E) DEPARTMENT

G. O. (Ms.) 114/83/PW. *Dated, Trivandrum, 28th September,* 1983.

NOTIFICATIONS

(i)

S.R.O. No. 1616/83.—Whereas the Chittariparambu Panchayat has in its resolution No. 148/81 dated the 17th September, 1981 requested that the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) shall be applied to that Panchayat area;

Now, therefore, in exercise of the powers conferred by subsection (3) of section 1 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala hereby apply all the provisions of the said Act to the Chittariparambu Panchayat area in the Cannanore District with effect from the date of publication of this notification in the Gazette.

(ii)

S. R. O. No. 1617/83.—In exercise of the powers conferred by sub-section (1) of section 3 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala hereby appoint the Munsiff, having jurisdiction over the Chittariparambu Panchayat area in the Cannanore District, to be the Rent Control Court for the said area, with effect from the date of publication of this notification in the Gazette

(iii)

S. R. O. No. 1618/83.—In exercise of the powers conferred by subsection (2) of section 3 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala hereby appoint the Tahsildar, having jurisdiction over the Chittariparambu Panchayat area in the Cannanore District, to be the Accommodation Controller for the said area, with effect from the date of publication of this notification in the Gazette.

(iv)

S.R.O.No. 1619/83.—In exercise of the powers conferred by clause (a) of subsection (1) of section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala hereby confer on the Subordinate Judge or the Principal Subordinate Judge, as the case may be, having jurisdiction over the Chittariparambu Panchayat area in the Cannanore District, the powers of the Appellate Authority for the purposes of the said Act in the said area with effect from the date of publication of this notification in the Gazette.

By order of the Governor,
C. K. K. PANICKER,
Secretary to Government.

Explanatory Note

(This does not form part of the above notifications, but is intended to indicate their general purport).

The Chittariparambu Panchayat in the Cannanore District has in its resolution No. 148/81 dated the 17th September, 1981 requested Government to extend the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) to its area. Under section 1(3) of the said Act, Government can extend the provisions of the Act to any area of the State by a notification in the Gazette, provided that such notification shall be supported by a resolution passed by the local authority of the area affected by the notification. The above notifications are to achieve the above purpose and issued on the request of the Panchayat concerned.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport-C) Department

NOTIFICATION

No. 15985/TC2/83/TF&P. *Dated, Trivandrum, 30th September* 1983.

S. R. O No. 1620/83.—Whereas representation has been received by Government from the Stage Carriage Operator Smt. Rosy, w/o Chakkoru, Chalakkal House, Puranattukara, Trichur that the arrears of Vehicle tax for the period from 1st January, 1982 to 30th June, 1982 and for the quarter ended on the 30th September, 1982 in respect of the Stage Carriage bearing Registration number KLP. 1391 could not be remitted within the prescribed period due to financial strain and that permission may be granted to remit the arrears of Vehicle Tax in respect of this vehicle in monthly instalments;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the arrears of vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the period from 1st January, 1982 to 30th June, 1982 and for the quarter ended on the 30th September, 1982 due to financial strain;

And whereas, the Government are convinced that non-operation of the said stage carriage due to non-payment of tax would cause great inconvenience to the travelling public;

And whereas, the Government consider it necessary in public interest to permit the stage carriage operator to remit the arrears of vehicle tax for the period from 1st January, 1982 to 30th June, 1982 and for the quarter ended on the 30th September, 1982 in respect of the said stage carriage in equal monthly instalments;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the arrears of vehicle tax for the period from 1st January, 1982 to 30th June, 1982 and for the quarter ended on the 30th September, 1982 in respect of the said stage carriage ordinarily kept for use in the state shall be paid in six equal monthly instalments beginning from 1st July, 1983 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the Notification (5) No. 33382/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 879/75 in the Kerala Gazette Extraordinary No. 572, dated the 29th September, 1975.

By order of the Governor,
V. A. AGUSTINE,
Additional Secretary to Government.

G 1959.

[P.T.O.]

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification.)

Government have received representation from the Stage Carriage Operator as shown in the notification requesting instalment facility for payment of vehicle tax for the period from 1st January, 1982 to 30th June, 1982 and for the quarter ended on the 30th September, 1982 due to financial strain;

Government are convinced of the position and in public interest, grant instalment facility for payment of tax as otherwise the vehicle might be put out of operation for non-payment of tax causing great inconvenience to the travelling public

GOVERNMENT OF KERALA

Labour (E) Department

NOTIFICATION

G. O. (Rt) No. 1249/83/LBR. *Dated, Trivandrum, 31st October* 1983.

S. R. O. No. 1621/83.— Whereas the Government of Kerala are satisfied that public interest so requires that the opening time of Coronation Theatre, Calicut should be fixed as 12 noon, for the purpose of conducting noonshows;

Now, therefore, in exercise of the powers conferred by subsection (2) of section 10 of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), the Government of Kerala hereby order that for a period of three months from the date of this notification the said theatre shall not be opened earlier than 9 a. m. on Saturdays, Sundays and Public holidays which fall on other days of the week, and 12 noon on all other days, or closed on any day later than 2 a. m.

By order of the Governor,
U. MAHABALA RAO,
Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

The provisions of the Kerala Shops & Commercial Establishments Act, 1960 (34 of 1960) are applicable to the Cinema Theatres in this State. The Managing Partner, Coronation Theatre, Calicut has requested Government to issue orders permitting him to conduct noonshows from 12 noon in the Theatre, under his management. Government consider that the request may be allowed for a period of three months. This notification is to achieve the above object.

GOVERNMENT OF KERALA

Labour (E) Department

NOTIFICATION

G. O. Ms. No. 51/83/LBR. *Dated, Trivandrum, 31st October* 1983.

S. R. O. No. 1622/83.—In exercise of the powers conferred by section 5 of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), the Government of Kerala, being satisfied that public interest so requires, hereby exempt the North Malabar Gramin Bank, Cannanore, from all the provisions of the said Act, except section 18 thereof.

By order of the Governor,
U. MAHABALA RAO,
Secretary to Government.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

All the scheduled commercial Banks and the Nationalised Banks in the State stand exempted from the provisions of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960). The General Manager, North Malabar Gramin Bank, Cannanore has requested to grant similar exemption to the Bank. Government have examined the matter and decided to exempt the North Malabar Gramin Bank, Cannanore from all the provisions of the Kerala Shops and Commercial Establishments Act, 1960 except section 18 of the Act as the nature of functioning of the Bank is similar to that of nationalised banks and in the light of the fact that public interest is involved in the matter.

This notification is intended to achieve the above purpose.

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G. O. MS. No. 260/83/H. Edn   *Dated, Trivandrum, 31st October* 1983.

S.R.O. No. 1623/83.—In exercise of the powers conferred by sub-section (1) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the Schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala, and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following Scheme for the administration of the said property, the same having been previously published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966, and appoint the date of publication of this notification to be the date on which the said scheme shall come into operation, namely:—

SCHEME

1. This Endowment may be called "Kuppandi Memorial Endowment Fund."

2. The corpus of the Endowment shall consist of Rs. 4,000 (Rupees four thousand only) and shall be vested with the Treasurer of Charitable Endowments, Kerala.

3 The corpus of the Endowment shall be invested in any long term securities of the Government of India or the Government of Kerala or in any of the securities approved by the Government of Kerala.

4. The Headmistress of Government Victoria Girls High School, Chittur, Palghat shall be the Administrator of the Fund.

5. The annual interest accruing on the Fund shall be utilised during the succeeding year for awarding a prize in cash worth Rs. 101 (Rupees One hundred and one only), to a student of the Government Victoria Girls High School, Chittur, Palghat who has passed the Secondary School Leaving Certificate Examination during the previous year, in the first attempt, securing the highest number of marks and for distributing sweets to the students and teachers of the said institution.

6 The prize shall be awarded on the occasion of the School Day Celebration or on any other occasion in the academic year as decided by the Administrator.

7. If, in any year, two or more pupils secure the same number of highest marks, then the amount shall be divided equally among them and the prizes awarded accordingly.

8. Requisition for payment of annual interest shall be send by the Administrator at any time not later than two months prior to the date fixed for the award of prize, and the Treasurer of Charitable Endowments shall thereupon arrange to place the annual interest at the disposal of the Administrator.

9. If, in any year the interest is not utilised as provided in clause 5, or if the prize is not awarded owing to the non-availability of a suitable candidate or for any other reason or any balance is left after awarding the prize, such amount shall be added on to the corpus of the Fund by the Treasurer of Charitable Endowments unless its payment is allowed by the Treasurer in exceptional cases on the specific recommendation of the Controlling Authority specified in clause 10.

10. If any doubt or dispute arises regarding the meaning or interpretation of the Scheme, it shall be referred to the Director of Public Instructions, whose decision thereon shall be final.

SCHEDULE

Name of Endowment	*Details of Property*
(1)	(2)
"Kuppandi Memorial Endowment Fund".	Rs. 4,000 (Rupees four thousand only)

By order of the Governor,

A. RAMASWAMY PILLAI,

Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Shri. P. R. Kuppandi Pilankad, Pallatheri Amsom, Palghat, wishes to institute an endowment in his name in Government Victoria Girls High School, Palghat. A preliminary notification regarding this has been published in the Gazette dated 6-9-1983. Now Government have accepted the Endowment for Institution and hence this Notification.

GOVERNMENT OF KERALA

Home (B) Department

NOTIFICATIONS

G. O. Ms. No. 140/83/Home. *Dated, Trivandram,* 18*th October* 1983

I

S. R. O. No. 1624/83.—In exercise of the powers conferred b section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950 and section 59 of the Prisons Act 1894 (Central Act IX of 1894) th Government of Kerala hereby make the following rules further to amen the Kerala Prisons Rules, 1958, namely:—

RULES

1. *Short Title.*—These rules may be called the Kerala Prison (Amendment) Rules, 1983.

2. *Amendment to the Rules.*—In the Kerala Prisons Rules, 1958,—

(1) in rule 13,—

(a) In the second sentence for item (d) the following items shal be substituted, namely:—

"(d). One Senior Lawyer of standing at the Bar nominated b Sessions Judge of the District, and;"

(b) for the last sentence the following shall be substitute namely:—

"Every non-official visitor shall be appointed for a period o two years.

Provided that Government may, if they so consider necessary cance the appointment of any or all of the non-official members at any tim during such term for good and sufficient reasons, or for their failur to visit the Jail concerned consecutively for three months. But in the case of cancellation of appointment of the senior lawyer the session Judge of the District shall be consulted".

3. in rule 14 for the words "fortnightly" and "fortnight" wherever they occur, the words "monthly" and "month" shall respectively be substituted;

4. After rule 16, the following rule shall be inserted, namely:—

"16 A". *Inspection by Senior Lawyer and Sessions Judge.*—(1) Notwithstanding the provisions contained in rule 16,—

(a) The Senior Lawyer nominated under clause (d) of rule 13 shall while making his monthly visits to Jails, entertain grievances, if any, from the prisoners and report the matter to the Sessions Judge of the District;

(b) The Sessions Judge shall during his monthly visits to the Jails entertain grievances, if any, from the Prisoners.

(2) The Sessions Judge shall recommend to the High Court such action as is necessary to be taken by the Inspector General of Prisons or by the Government and the High Court may, after considering such recommendation communicate its views to the Government with a view to enable them to act upon.";

Explanatory Note

(This is not part of the notification but is intended to explain its purport)

The Supreme Court of India, in its judgement in W.A 1009/79 issued certain mandates to the State Governments. One of the mandates of the Supreme Court concerns the role to be played by the District Magistrates, Sessions Judges, High Court and the Supreme Court in nominating lawyers of Standing who are to visit jails periodically with a view to ascertaining the grievances of the prisoners and to report back to the courts. It has become necessary to amend the relevant provisions of the Kerala Prison Rules relating to the Board of Visitors suitably in compliance of the mandate of the Supreme Court.

The term of office of the Non-officials in the visitors board is fixed as one year in respect of Central Prisons/Open Prison whereas it is two years in respect of Sub Jails. It is considered desirable to fix a uniform tenure of office for these Boards. Necessary provision has also to be made empowering Government to cancel the nominations of any or all the non-official members at any time for good and sufficient reasons. The above amendments to the Kerala Prisons Rules are to achieve the above purpose.

II

S. R. O. No. 1625/83.—In exercise of the powers conferred by section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950) and section 59 of the Prisons Act 1894 (Central Act IX of 1894), the Government of Kerala hereby make the following amendments to the Kerala Sub Jail Rules, namely:—

AMENDMENTS

In the said rules,—

(1) in Sub Rule (ii) of rule 12, for item (C) in the following items shall be substituted, namely:—

"(C) One Senior Lawyer of standing at the Bar nominated by the Sessions Judge of the District; and",

(2) for rule 14, the following rule shall be substituted namely:—

"Every non-official visitors shall be appointed for a period of two years:

Provided that the Government may, if they so consider necessaryt cancel the appointment of any or all of the non-official members a, any time during such terms for good and sufficient reasons or for their failure to visit the Jail concerned consecutively, for three months. But, in the case of cancellation of appointment of the Senior Lawyer the Sessions Judge of the District shall be consulted."

(3) In Chapter IV, after rule 15, the following rule shall be inserted, namely:—

"15 A. (1) Notwithstanding anything contained in the chapter,

(a) the Senior Lawyers nominated by the Sessions Judges under rule 12, shall visit jails once a month, entertain grievances, if any, from the prisoners and report the matter to Sessions Court

(b) the sessions judge shall make a visit to the Jails in his jurisdiction at least once in three months to enable the prisoners to submit their grievances to him.

(2) The Sessions Judge shall recommend to the High Court such action as is necessary to be taken by the Inspector General of Prisons or by the Government and the High Court may after considering such recommendation communicate its views to the Government with a view to enable them to act upon"..

Explanatory note

(This is not part of the Notification but is intended to explain its purport).

The Supreme Court of India, in its judgement in W.A. 1009/79, issued certain mandates to the State Governments. One of the mandates of the Supreme Court concerns the role to be played by the District Magistrates, Sessions Judges, High Court and the Supreme Court in nominating lawyers of Standing who are to visit jails periodically with a view to ascertain the grievances of the prisoners and to report back to the courts. It has become necessary to amend the relevant provisions of the Kerala Sub Jail Rules relating to the Board of Visitors suitably in compliance of the mandate of the Supreme Court. Necessary provision has to be made empowering Government to cancel the nominations of any or all the non-official members at any time for good and sufficient reasons. The above amendments to the Kerala Sub Jail Rules are to achieve the above purposes.

By order of the Governor,

N. KALEESWARAN,
Commissioner & Secretary to Government,

Kerala Gazette No. 45 dated 15th November 1983.
PART I **Section iv**

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport-C) Department

NOTIFICATION

No. 17347/TC2/83/TF&P. *Dated, Trivandrum, 30th September* 1983.

S.R.O. No. 1626/83.—Whereas, representation has been received by Government from the Stage Carriage Operator Shri N. Sethunathan, Kamalalayam, Chathanpara, Attingal, Trivandrum that the arrears of vehicle tax for the period from 1st January, 1982 to 31st December, 1982 and for the quarter ended on the 31st March, 1983 in respect of the Stage Carriage bearing Registration number KRT. 7738 could not be remitted within the prescribed period due to financial strain and that permission may be granted to remit the arrears of vehicle tax in respect of this vehicle in monthly instalments;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the arrears of vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the period from 1st January, 1982 to 31st December, 1982 and for the quarter ended on the 31st March, 1983 due to financial strain;

And whereas, the Government are convinced that non-operation of the said stage carriage due to non-payment of tax would cause great inconvenience to the travelling public;

And whereas, the Government consider it necessary in public interest to permit the stage carriage operator to remit the ⅓rd of the arrears of vehicle tax for the period from 1st January, 1982 to 31st December, 1982 and for the quarter ended 31st March 1983 in respect of the said stage carriage on or before 1st July, 1983 and the balance in six equal monthly insalments;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that ⅓rd of the arrears of vehicle tax for the period from 1st January 1982 to 31st December, 1982 for the quarter ended on the 31st March, 1983 in respect of the said stage carriage ordinarily kept for use in the State shall be paid on or before the 1st July, 1983 and the balance amount in ten equal monthly instalments commencing from 1st August 1983 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the

Notification (5) No. 33942/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No 572 dated the 29th September, 1975.

By order of the Governor,

V. A. AUGUSTINE,

Additional Secretary to Government.

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification.)

Government have received representation from the Stage Carriage Operator as shown in the notification requesting instalment facility for payment of vehicle tax for the period fror 1st January, 1982 to 31st December, 1982 and for the quarter ended on the 31st March, 1983 due to financial strain;

Government are convinced of the position and in public interest, grant instalment facility for payment of tax as otherwise the vehicle might be put out of operation for non-payment of tax causing great inconvenienee to the travelling public.

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G.O.MS. No. 259/83/H.Edn. *Dated, Trivandrum, 31st October* 1983.

S.R.O. No. 1627/83.—In exercise of the powers conferred by subsection (1) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the Schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala, and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following Scheme for the administration of the said property, the same having been previously published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966, and appoint the date of publication of this notification to be the date on which the said scheme shall come into operation, namely:—

SCHEME

1. This Endowment may be called "Professor Sankaradasan Thampi Farewell Memorial Fund".

2. The Gorpus of the Endowment shall consist of Rs. 3,500 (Rupees three thousand and five hundred only) raised by Professor R. Sankaradasan Thampi Farewell Committee and shall be vested with the Treasurer, Charitable Endowments, Kerala.

3. The Gorpus of the Endowment shall be invested in any long term securities of the Government of India or the Government of Kerala or in any of the securities approved by Government.

4. The Principal, Government Law College, Trivandrum, shall be the Administrator of the fund.

5. The annual interest accruing on the fund shall be utilised during the succeeding year for awarding a prize in cash to a student of the Government Law Gollege, Trivandrum who has Passed the 1st L.L.B. Examination securing the highest number of marks in the Legal Theory and Comparative Law Paper. If, in any year, two or more candidates secure the same number of highest marks, then the amount shall be divided equally among them and the prizes awarded accordingly.

6. Requisition for payment of annual interest shall be sent by the Administrator at any time not later than two months prior to the date fixed for the award of the prize and the Treasurer, Charitable Endowments shall thereupon arrange to place the annual interest at the disposal of

the Administrator. The prize shall be awarded not later than three months from the date of the publication of the results of the First L.L.B., by the University of Kerala.

7. If, the interest is not utilized as provided in clause 5, or if the prize is n t awarded owing to the non-availability of a suitable candidate or for any other reason or any balance is left after awarding the prize such amount or amounts shall be added on to the corpus of the funds by the Treasurer of Charitable Endowment unless its payment is allowed by the Treasurer in exceptional cases on the specific recommendation of the controlling authority specified in clause 8.

8. If, any doubt or dispute arises regarding the meaning or interpretation of the scheme, it shall be referred to the Secretary to Government, Higher Education Department, whose decision thereon shall be final.

SCHEDULE

Name of Endowment (1)	*Details of property* (2)
"Prof. R. Sankaradasan Thambi Farewell Memorial Endowment Fund".	Rs. 3,500 (Rupees three thousand and five hundred only).

By order of the Governor,
A. RAMASWAMY PILLAI,
Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

Prof. K. Madhavan Pillai; General Convenor, Prof. R. Sankaradasan Thambi Farewell Committee has forwarded a draft Scheme and requested to institute an Endowment in the name of Prof. R. Sankaradasan Thampi in Government Law College, Trivandrum. A preliminary notification regarding this has been published in the Gazette dated 30-8-1983. Now Government have accepted the Endowment for institution in the Government Law College, Trivandrum-I and hence this notification.

GOVERNMENT OF KERALA

Higher Education (E) Department

NOTIFICATION

G. O. (Ms.) No. 242/83/H. Edn. *Dated, Trivandrum, 12th October* 1983.

S.R O. No. 1628/83.—In exercise of the powers conferred by subsection (·) of section 4 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890), the Government of Kerala hereby order that the property specified in column (2) of the Schedule appended herewith belonging to the Endowment mentioned in column (1) thereof, shall be vested with the Treasurer of Charitable Endowments, Kerala, and under subsections (1) and (3) of section 5 of the said Act, the Government of Kerala hereby settle the following Scheme for the administration of the said property, the same having been previously published under rule 3 of the Charitable Endowments (Kerala) Rules, 1966, and appoint the date of publication of this notification to be the date on which the said Scheme shall come into operation, namely:—

SCHEME

1. This Endowment may be called "Smt. B. K. Nalini Endowment Fund".

2. The corpus of the Endowment shall consist of Rs. 1,000 (Rupees One thousand only), and shall be vested with the Treasurer of Charitable Endowments, Kerala.

3. The corpus of the Endowment shall be invested in any long term securities of the Government of India or the Government of Kerala or in any of the securities approved by the Government of Kerala.

4. The Headmaster/Headmistress, Government High School for Girls, Perumbavoor shall be the Administrator of the Fund.

5. The annual interest accruing on the fund shall be utilised during the succeeding year for awarding a prize in cash to a student of the Government High School for Girls, Perumbavoor who has passed the Secondary School Leaving Certificate Examination conducted during the previous year in the first attempt by securing the highest number of marks in English I & II (Combined).

6. The prizes shall be awarded on the occasion of the School Day Celebration, or on any other suitable occasion in the academic year itself, as decided by the Administrator, and thereafter the fact of such award with relevant particulars shall be published in the notice board of the School for the information of the public.

G. 1629.

7. If, in any year, more than one student is found eligible for the prize by securing the same number of marks, then the amount of the prize shall be divided equally among them and the prizes awarded accordingly.

8. Requisition for payment of annual interest shall be sent by the Administrator at any time not later than two months prior to the date fixed for the award of the prize and the Treasurer of Charitable Endowments shall thereupon arrange to place the annual interest at the disposal of the Administrator.

9. If, in any year, the interest is not utilised as provided in clause 5, or if the prize is not awarded owing to the non-availability of a suitable candidate or for any other reason or if any balance is left after awarding the prize, such amount shall be added on to the corpus of the Fund by the Treasurer of Charitable Endowments, unless its payment is allowed by the Treasurer in exceptional cases on the specific recommendation of the controlling authority specified in clause 10.

10. If any doubt or dispute arises regarding the meaning or interpretation of the provisions of the scheme, it shall be referred to the Director of Public Instruction whose decision thereon shall be final.

SCHEDULE

Name of Endowment	*Details of Property*
(1)	(2)
"Smt. B.K. Nalini Endowment Fund".	Rs. 1,000 (Rupees One thousand only)

By order of the Governor,

A. RAMASWAMY PILLAI,

Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Sri I. Raghavan Vadakkunnathmalil, Asamannoor P.O. Perumbavoor wishes to institute an endowment in Government High School for Girls, Perumbavoor in the name of Smt. B.K. Nalini, Headmistress, Government High School for Girls, Perumbavoor. A preliminary notification regarding this has been published in the State Gazette dated 16-8-1983. Now Government have accepted the endowment for institution and hence this notification.

Reg. No. KL/TV(N)/1



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Tuesday, 15th November 1983 / 24th Karthika 1905 [No. 1374

GOVERNMENT OF KERALA

Water and Power (Electricity-A) Department

NOTIFICATION

No. 3642/ELA1/83/W & P. *Dated, Trivandrum, 15th November,* 1983.

S. R. O. No. 1631/83.—Whereas the Government of Kerala have, due to the worsening of the storage position and lower inflows into the Reservoirs during the years 1982 and 1983, issued orders to regulate the supply, distribution and consumption of Electrical energy in Notification No. 3642/ELA1/83/W & P dated the 7th June, 1983, published as S. R. O. No. 729/83 in the Kerala Gazette Extraordinary No. 595 dated the 7th June, 1983, as subsequently amended;

And whereas at present the storage position in Hydel Reservoirs in the State has slightly improved;

And whereas the Government of Kerala are of the opinion that it is necessary to give some more relief to the High Tension and Extra High Tension Consumers;

Now, therefore, in exercise of the powers conferred by section 22B of the Indian Electricity Act, 1910 (Central Act 9 of 1910), the Government of Kerala hereby make the following further amendment to the Notification No. 3642/ELA1/83/W & P dated the 7th June, 1983, namely :—

AMENDMENT

In the said Notification, in paragraph 1, for the figures and words "30 per cent" the figures and words "20 per cent" shall be substituted.

By order of the Governor,
P. JADAYUDAI MONY,
Deputy Secretary.

Explanatory Note

(This note is not part of the Notification, but is intended to indicate its general purport)

In Notification No. 3642/ELA1/83/W & P. dated the 7th June, 1983, as amended, Government have, interalia, imposed 30% power cut to High Tension and Extra High Tension Consumers except those mentioned in para 5 of the Notification. Consequent on the slight improvement in the storage in the Hydel Reservoirs in the State it has been decided to give 80% power to the High Tension and Extra High Tension Consumers. This notification is intended to achieve the above object.

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KERALA GAZETTE

EXTRAORDINARY

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PROSPECTUS

for Admission to Post Graduate Course in the Dental College attached to the Medical College, Trivandrum 1982-83.

1. The details of courses and the seats available in the Dental College, Trivandrum thereof:

Sl. No.	*Name of courses*	*Number of Seats*
1.	M. D. S. in Prosthetic Dentistry	2
2.	M. D. S. in Oral Surgery	2
3.	M. D. S. in Orthodontics	2
4.	M. D. S. in Periodontics	2
5.	M. D. S. in Operative Dentistry	2
6.	M. D. S. in Oral Pathology	2

2. *Eligibility for Admission*

(a) A candidate for admission to M. D. S. Course shall be required to have taken Degree of Bachelor of Dentistry of Kerala University or any other University recognised by the Kerala University as equivalent and have passed the B. D. S. Degree or equivalent qualification with not less than one year's experience in clinical/teaching including House Surgeoncy/Senior House Surgeoncy. Those who have no such experience should have passed B. D. S. not less than two years' previous to the date of the notification inviting applications appearing in the Gazette.

33/4859/MC.

(b) Only Indian citizens of Kerala origin are eligiblo for admission to the P. G. Course. The candidates in order to prove that they are Indian citizens of Kerala origin have to produce certificates from the Village Officer/Tahsildar to show that he/she or his/her parent (Father/Mother) has been a resident of the Kerala State for three years within a continuous period of 5 years or has owned or possessed landed property or house in Kerala State or a Certificate of education from the Principal of the Medical College in the State where he/she has studied.

(c) The above seats will be pooled together. 50% of the seats in each of the subjects shall be in the general merit.

(d) Only those who are qualified as per clause (a) above on 30-7-1983 or before are eligible to apply.

3. *Reservation of seats*

(a) 10% of the seat in any branch or branches will be reserved for S.C./S.T. candidates. They should produce certificate from the Village Officer of the village concerned to the effect that he/she belongs to S.C./S.T. in the form appended to the application form. Selection to these seats will be made on the basis of merit at the Entrance Examination.

(b) 10% of the seats will be reserved for Dental Surgeon under Health Services Department. Selection will be strictly on the basis of seniority. They shall produce Service Certificate indicating the number of completed year of regular service under Government issued by an Officer of Government not below the rank of Deputy Director of Health Services.

(c) 30% of the seats will be reserved for Tutors in Dentistry. Selection to these seats will be on the basis of seniority. Tutors in regular service in a particular speciality will be considered against the reserved seats in that particular speciality only.

4. Admission to the P. G. Course (M. D. S.) except those coming under clause 3(b) and 3(c) shall be made on the basis of an Entrance Examination conducted by the Commissioner for Entrance Examination. The minimum marks to be obtained at the Entrance Examination is 45% for General merit candidates and 35% for S.C./S.T. candidates. Admission will be based on merit as shown in the results of the Entrance Examination.

5. Service candidates in clause 3(b) and (c) are also entitled to appear for the Entrance Examination, if they so desire against the open competition quota.

6. If the Selection Committee feels any doubt about any certificate furnished by the candidate such certificates will be accepted only if found correct on further verification.

7. Admission even if given will be cancelled if it is found later that false certificates have been produced or that the admissions have been secured by fraudulant means.

8. *Duration of the course*

The duration of the course will be two academic years.

9. *Payment of Fees*

(i) Tuition fees—Rs. 650 per annum (subject to modification)

(ii) Registration fees—Rs. 10 per annum

(iii) Van fees—as prescribed by the Government

(iv) Miscellaneous fee—Rs. 58.25 for the first year and Rs. 57..25 for the second year

(v) Caution deposit (Refundable)—Rs. 100 (for the recovery of breakages, or loss of lab. equipments, tools, etc.)

Note:—The tuition fees once paid for a particular course will not be refunded or adjusted against another course.

10. Every candidate admitted to the P. G. Course in the Dental College will have to execute a bond in the appended form at the time of admission to the effect that he/she shall pay to Government a sum of Rs. 1000 (Rupees one thousand only) towards liquidated damages in the event of his/her interrupting or discontinuing the course at any time after one month from the date of admission to the course.

Note:—A candidate leaving one course to join another course in the same year or a candidate leaving one course to take up employment in the Kerala Government Service will not be liable to pay the liquidated damages.

11. The selection list will be valid only for 6 months from the date of publication. The validity period may be extended by the Government if necessary.

12. *Entrance Examination*

The Entrance Examination will consist of two parts, containing objective type questions. Part I will cover questions on all the subjects of B. D. S. Examination level (First B. D. S., 2nd B. D. S., 3rd B. D. S. and Final B. D. S.) and Part II will consist of the questions on the subject at the B. D. S. level for which the candidates have applied for admission. The duration of Part I Examination will be 2 hours and that for Part II will be one hour. The schedule of the examination, etc., will be notified at the appropriate time.

13. In the case there is a tie in the total aggregate marks obtained at the Entrance Examination, it will be resolved as follows:—

(a) Marks for Part I will be excluded and the candidate with the higher marks in Part II will be ranked higher.

(b) When over two candidates are found equal on assessment of their merit, even after resolution as above preference will be given to the candidate who has done one year House Surgeoncy or one year Tutorship/Demonstrationship in the concerned subject.

14. Application forms can be had from the Principal, Medical College, Trivandrum on payment of Rs. 100 at the cash counter or Rs. 105 by Money Order for which a receipt will be issued. Money Order coupons not containing the full address of the applicant will not be accepted. Money Orders will be accepted in the office of the Principal, Medical College, Trivandrum upto only five days ahead of the last date fixed for receipt of applications. Postal Orders, cheques and drafts will not be accepted.

A candidate can apply admission to not more than three P. G. Degree (M. D. S.) Courses. For each additional course applied for, an extra fee of Rs. 50 should be paid. The application form will be a common one and each candidate should indicate the order of preference of the courses so chosen in the application form. Amount paid will not be refundable on any account. The amount paid includes examination fees. Receipts received for amounts paid should be attached to the application form.

15. *How and when to apply*

The application form correctly filled in together with the following documents should be sent by registered post to the Commissioner for Entrance Examination, Trivandrum-695041 before the time and date notified by the Commissioner. Late and defective applications will not be considered by the Commissioner for Entrance Examinations under any circumstances. The candidate will have to produce on demand any other certificate/record that may be prescribed by Government or for this matter by the Director of Medical Education, Trivandrum. Application forms will be common for general merit and reserved quotas for S.C./S.T. Health Services and Tutor quotas be clearly superscribed. "Application for Health Services/Tutor Quotas".

16. *Certificate to be produced*

In all cases true copies/Photostat of the following documents have to be produced duly attested:—

(a) Receipt of amount paid for application form

(b) Pass Certificate.

(c) House Surgeoncy/Senior House Surgeoncy certificate

(d) Dental Registration Certificate

(e) Service certificate as provided in clause 3 (b) and (c) wherever necessary.

(f) S.S.L.C. (Page 3) for verification of community in case of S.C./S.T. candidates.

(g) Passport size photographs (affixed at the space provided).

(h) Certificate of residence or ownership of land or education.

(i) Any other certificates required along with the application.

17. The Commissioner for Entrance Examinations will prepare and publish the select and waiting lists of the candidates whose selection is based purely on Merit as assessed at the entrance examination and forward the lists to the Director of Medical Education.

18. A selection Committee consists of the Secretary to Government, Health (Chairman), Director of Medical Education (Convener), Director of Health Services and Director & Professor, Dental College, Trivandrum/Calicut, Senior most Professor/Associate Professor as the case may be in the respective departments (Member).

19. The Director of Medical Education will allot the selected candidates to the Dental College, Trivandrum as per the seats available.

20. The decision of the Director of Medical Education shall be final in all the matters regarding selection.

Directorate of Medical Education,
Trivandrum, 15-11-1983.

Dr. C. V. Korah,
Director of Medical Education.

APPENDIX I

(*Vide para* 10)

(50 Rupees Kerala Stamp Paper)

KNOW ALL MEN BY THEM PRESENTS that we.......................... residing at....................................hereinafter called the 'Bounden' (which expression shall unless excluded by or repugnant to the context include his heirs, executors administrators and legal representatives and....................and................hereinafter called the first surety and second surety respectively (which expression shall unless excluded by repugnant to the context include their respective heirs, executors, administrators and legal representatives) bind ourselves jointly and severally to pay to the Governor of Kerala (hereinafter called the Government) on demand and without demur a sum of Rs......................the probable amount that Government may have to spend for paying stipend to the Bounders and a further sum of Rs.................................as liquidated damages.

Signed this...........................day of...................... in the year one thousand nine hundred and eighty-three by the Bounden Shri......................

In the presence of witnesses:

1.

2.

WHEREAS the bounden has been under the (H.E. the name of the rules which will form part of this deed as if incorporated herein, hereinafter called the Rules, selected to undergo the course of study in Government have agreed to give the bounden a stipend of Rs. 400 (Four hundred only) per month sanctioned in G.O.Ms.90/80/PD dated 29-3-1980 for the study of.......... at the...........................on condition of his executing a bond supported by two sureties on the terms appearing hereinafter which the Bounden has agreed to do.

Now the condition of the above written obligation is that in the event of the Bounden not conforming to or observing the rules and conditions regarding the progress of his study or interrupting or discontinuing his course, at any time after a period of one month from the date of admission or participating a strike or leave the training course on account of indiscipline or misconduct on his part or failing to serve the Government for a period of five years if required to do so within a period of six months after qualifying

for full registration after completing the course, or for other reasons not considered valid and satisfactory by the Secretary to Government of Kerala, Health Department whose decision in this behalf shall be final, the bounden and the sureties shall jointly and severally pay and refund to the Government on demand and without demur all the amount spent on the Bounden on account of the said course of studies, together with the liquidated damages of Rs. 1,000. The decision of the Secretary to Government of Kerala, Health Department as to the commission of a breach or as to any indiscipline or misconduct on the part of the Bounden as also the amount of compensation payable and as to whether the Bounden has or has not performed and observed the conditions and bonded obligations under these presents shall be final and binding on the Bounden and the sureties.

And upon making such payment, the above written obligation shall be void and of no effect, but otherwise it shall remain in full force and virtue.

It is further agreed and declared that in the event of the Bounden being unsuccessful in any of the qualifying examinations conducted in the said institute, the Government may at their discretion, withhold the payment of stipend for the prosecution of further studies and the decision of the Secretary to the Government of Kerala, Health Department in this behalf shall be final and binding:

Provided further that the Bounden and the sureties do hereby agree that all sums found due to the Government under or by virtue of this bond may be recovered (jointly and severally from them and their properties, movable and immovable as if such sums were arrears of land revenue under the Provisions of the Revenue Recovery Act for the time being in force or in such other manner as the Government may deem fit.

It is agreed that the liability of the sureties hereunder shall not be impaired or discharged by reason of time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or consent of the sureties) in respect of or in relation to the several obligations and conditions to be performed or discharged by the bounden or by any other matter or thing whatsoever which, under the law relating to sureties, shall but for this provision have the effect of releasing the sureties from such liability, nor shall it be necessary for the Government to sue the bounden before suing either of the sureties for amounts due hereunder.

It is agreed that the expense of stamp duty to this document shall be borne by the bounden.

In Witness Whereof the bounden.............................. and.............................. and ....sureties have put their respective hands the day and year here in above written.

Signed by the bounden in the presence of

Witness:—

1.

2.

(Signature of the Bounden)

Signed by...

(Signature of the first surety)

Signed by...

(Signature of the second surety)

In the presence of witness:—

1.

2.

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TRIVANDRUM, 1983.

Government of Kerala
1983

Reg. No. KL/TV(N)/1



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Tuesday, 15th November 1983 / 24th Karthika 1905 No. 1373

GOVERNMENT OF KERALA

Agriculture (NCA) Department

NOTIFICATION

G.O. (P) No. 330/83/AD. *Dated, Trivandrum, 5th November,* 1983.

S.R.O. No. 1630/83.—In exercise of the powers conferred by sub-section (1) of section 20 of the Insecticides Act, 1968 (Central Act 46 of 1968), and in supersession of the Notification II issued under No. 5717/G2/71/AD dated the 1st December, 1971 and published as S.R.O. No. 156/72 in Part I, section iv of the Kerala Gazette No. 14 dated the 4th April, 1972, the Government of Kerala hereby appoint the Agricultural Development Officers (Junior Agricultural Officers) in charge of the Agricultural Development Office, to be Insecticide Inspectors under the said Act for the areas within their respective jurisdiction:

Provided that those Junior Agricultural Officers who are not graduates in Agriculture, or graduates in Science with Chemistry as one of the subjects shall exercise only the powers of an Insecticide Inspector under clause (a) and clause (d) of sub-section (1) of section 21 of the said Act.

By order of the Governor,

N. CHANDRASEKHARAN NAIR,
Special Secretary to Government.

33/4841/MC.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per notification No. II-5717/G2/71/AD dated 1-12-1971 published as S.R.O. No. 156/72 in the Kerala Gazette No. 14 dated the 4th April 1972, the Agricultural Extension Officers in the Community Development Block areas and Agricultural Assistants in the non-Block areas were appointed as Insecticide Inspectors within their respective jurisdiction for the purpose of carrying out the functions and duties under sections 21 and 22 of the Insecticides Act, 1968. Since then the designation of the Agricultural Extension Officers and Agricultural Assistants has been changed as Junior Agricultural Officers and the Departmental set up has been reorganised by the extension of the Kerala Agricultural Extension Project to the nine other districts of the State and Agricultural Development Offices have been set up with Agricultural Development Officer (Junior Agricultural Officer) in charge of these offices. It has, therefore, become necessary to modify the earlier notification. This notification is intended to achieve the above object.

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1983

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KERALA GAZETTE

EXTRAORDINARY

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Vol. XXVIII] Trivandrum, Tuesday, 15th November 1983 / 24th Karthika 1905 (Saka) [No. 1375

കേരള സർക്കാർ

ഗതാഗതവും മൽസ്യബന്ധനവും തുറമുഖങ്ങളും (എച്ച്) വകുപ്പ്

പ്രഖ്യാപനം

നമ്പർ 26929/എച്ച്. 3/83/ററി. എഫ്. ആൻറ് പി.

തിരുവനന്തപുരം, 1983 നവംബർ 8.

എസ്. ആർ. ഒ. നമ്പർ 1632/83.-- ഇൻഡ്യൻ ഭരണഘടനയുടെ 258-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച് രാഷ്ട്രപതി, 31-5-1963-ലെ 2/4/63 ജുഡിഷ്യൽ II എന്ന നമ്പർ വിജ്ഞാപന പ്രകാരം, കേരള സംസ്ഥാനത്ത് യൂണിയന്റെ ആവശ്യത്തിനായി ഭൂമി വിലയ്ക്കെടുക്കുന്നത് സംബന്ധിച്ച്, 1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ട് (1962-ലെ 21), പ്രകാരമുള്ള കേന്ദ്ര സർക്കാരിന്റെ ചുമതലകൾ കേരള സർക്കാരിനെ അവരുടെ സമ്മതത്തോടുകൂടി ഭരമേൽപ്പിച്ചിരിക്കുന്നതിനാലും;

1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ററ് (1962-ലെ 21) 3-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പുപ്രകാരം താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമി സംബന്ധിച്ച് 1981 ജൂൺ 17-ാം തീയതിയിലെ 13918/ടി.ബി2/81/ടി.എഫ്. ആൻറ് പി. എന്ന നമ്പർ വിജ്ഞാപനം 1981 ജൂൺ 25-ാം തീയതിയിലെ 500-ാം നമ്പർ കേരള അസാധാരണ ഗസററിൽ എസ്.ആർ.ഒ. 752/81 എന്ന നമ്പരിൽ പ്രസിദ്ധീകരിച്ചിട്ടുള്ളതിനാലും;

33/4843/V.

1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21) 3-ാം വകുപ്പ് (2)-ാം ഉപവകുപ്പുപ്രകാരം കളക്ടർ സമർപ്പിച്ച റിപ്പോർട്ട് പരിഗണിച്ചതിൽ താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമി ഒരു പൊതുക്കാര്യത്തിന്, വിലയ്ക്കെടുക്കേണ്ടതാണെന്ന് കേരള സർക്കാരിന് ബോദ്ധ്യപ്പെട്ടിരിക്കുന്നതിനാലും;

ഇപ്പോൾ, അതിനാൽ, പ്രസ്തുത ആക്ട് 6-ാം വകുപ്പ്പ്രകാരം താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ളതും 566.52 ചതുരശ്രമീററർ വിസ്തീർണ്ണത്തിൽ അൽപ്പം കൂടുതലോ, കുറവോ വരുന്നതുമായഭൂമി ഒരു പൊതുക്കാര്യത്തിന് അതായത് ചിറക്കരയിൽ പോസ്ററ് ആഫീസും സബ്പോസ്ററ്മാസ്ററരുടെ ക്വാർട്ടേഴ്സും നിർമ്മിക്കുന്നതിന് ആവശ്യമുണ്ടെന്ന് കേരള സർക്കാർ ഇതിനാൽ പ്രഖ്യാപിക്കുകയും ആ ഭൂമി വിലയ്ക്കെടുക്കുന്നതിനുള്ള ഉത്തരവ് വാങ്ങുവാൻ പ്രസ്തുത ആക്ട് 7-ാം വകുപ്പുപ്രകാരം തലശ്ശേരി ലാൻറ് അക്വിസിഷൻ സ്പെഷ്യൽ തഹശീൽദാരോട് നിർദ്ദേശിക്കുകയും ചെയ്യുന്നു.

പ്രസ്തുത സ്ഥലത്തിൻെറ ഒരു പ്ലാൻ തലശ്ശേരി ലാൻറ് അക്വിസിഷൻ സ്പെഷ്യൽ തഹശീൽദാരുടെ ആഫീസിൽ സൂക്ഷിച്ചിട്ടുള്ളതും ആഫീസ് സമയത്ത് എപ്പോഴം വേണമെങ്കിലും അത് പരിശോധിക്കാവുന്നതുമാകുന്നു.

പട്ടിക

ജില്ല.—കണ്ണൂർ. | താലൂക്ക്.—തലശ്ശേരി.

മുനിസിപ്പാലിററി.—തലശ്ശേരി. | വില്ലേജ്.—തിരുവങ്ങാട്.

വാർഡ്-15. ബ്ലോക്ക്-8

(ഏകദേശ വിസ്തീർണ്ണമാണ് കൊടുത്തിരിക്കുന്നത്)

സർവ്വേ നമ്പർ	വിവരണം	വിസ്തീർണ്ണം (മീററർ)
ടി. എസ്. 288/3 എ	ആർ.ഡി.സി. നിലം	566.52 ചതുരശ്ര മീററർ

(ഒപ്പ്)

ഗവർണ്ണറുടെ ഉത്തരവ് പ്രകാരം,
വി. എ. അഗസ്ററിൻ,
ഗവൺമെൻറ് അഡീഷണൽ സെക്രട്ടറി.

വിശദീകരണക്കുറിപ്പ്

(ഇത് പ്രഖ്യാപനത്തിൻെറ ഭാഗമല്ല. എന്നാൽ പൊതു ഉദ്ദേശം വെളിപ്പെടുത്തുന്നതിന് ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

ഇൻഡ്യൻ രാഷ്ട്രപതി 31-5-1963-ലെ 2/4/63/ജുഡീഷ്യൽ II എന്ന നമ്പർ വിജ്ഞാപനത്തിൽ, കേരള സർക്കാരിൻെറ സമ്മതത്തോടുകൂടി സംസ്ഥാനത്ത് കേന്ദ്രസർക്കാരിൻെറ ആവശ്യത്തിലേക്ക് സ്ഥലം വിലയ്ക്കെടുക്കാനുള്ള അധികാരം അവരെ ഭരമേല്പിച്ചിട്ടുള്ളതും, മുകളിൽ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള സ്ഥലങ്ങൾ ഒരു പൊതു ആവശ്യത്തിന്, അതായത് ചിറക്കരയിൽ പോസ്ററ് ഓഫീസും സബ്പോസ്ററ്മാസ്ററരുടെ ക്വാർട്ടേഴ്സും നിർമ്മിക്കുന്നതിനു ആവശ്യമാണെന്ന് സർക്കാരിന് ബോദ്ധ്യപ്പെട്ടിട്ടുള്ളതുമാകുന്നു.

ഈ പ്രഖ്യാപനം മേൽപ്പറഞ്ഞ ആവശ്യത്തിനുദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.

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